

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

77-1263

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

MICHAEL YODER,
Defendant-Appellant.

UNITED STATES OF AMERICA,
Plaintiff-Appellant.

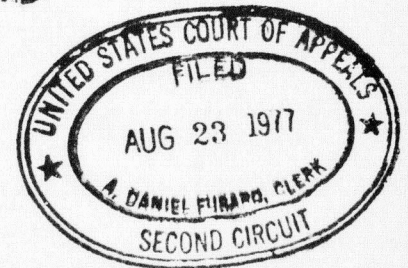
vs.

DANIEL YODER,
Defendant-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

**APPENDIX FOR PLAINTIFF-APPELLEE
AND PLAINTIFF-APPELLANT**

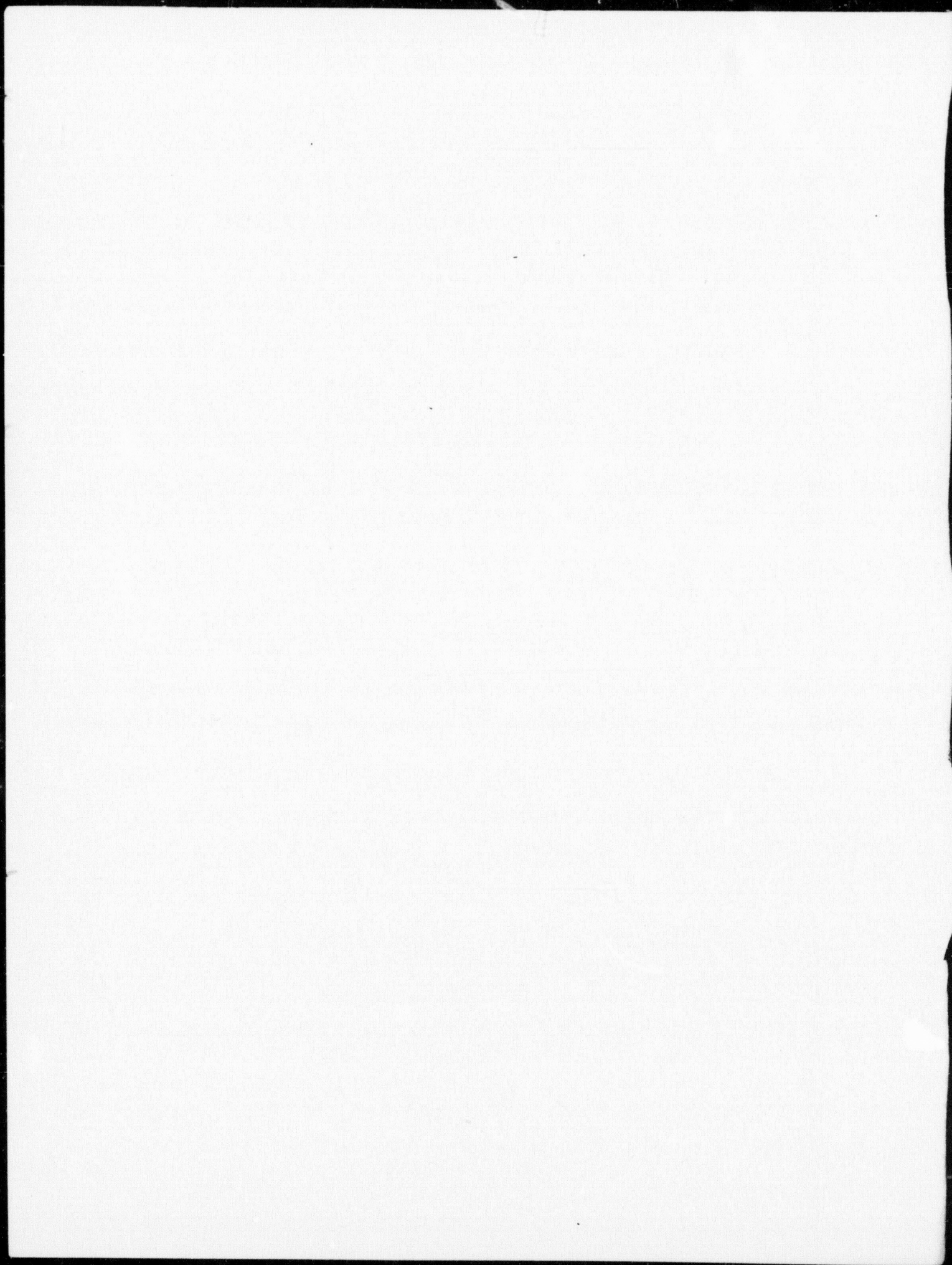
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Western District of New York,
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Buffalo, New York 14202.



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Proceeding before United States Magistrate
Edmund F. Maxwell, November 18, 1976.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

U.S. Mag.
Recd. 1-26-77

UNITED STATES OF AMERICA

-vs-

CR-76-174

DANIEL YODER and MICHAEL YODER

PROCEEDING

Before

UNITED STATES MAGISTRATE EDMUND F. MAXWELL

November 18, 1976

APPEARANCES: RICHARD J. ARCARA
United States Attorney
By: EDWARD J. WAGNER
502 U. S. Courthouse
Buffalo, New York

Defendants in person

THE COURT: This is the United States against Daniel Yoder and Michael Yoder, criminal indictment 76, case number 174. Who is Daniel Yoder? Are you Michael Yoder?

MICHAEL YODER: Yes sir.

THE COURT: An indictment has been returned against each of you. It's a three count indictment alleging that on or about the 20th of October 1976 each of you, together with one other person, did rob a bank which had been insured by the Federal Deposit Insurance Corporation and that approximately \$16,537 was taken. I'm not going to read the entire indictment to you at this particular time except to advise you that each of these counts in this indictment is a felony under the laws of the United States. I'm going to advise you at this time that that is the reason you have been brought into court and neither of you are required to make any statements to me or to anybody else, either now or at any stage of these proceedings. If either of you do make any statements, whatever that person says can be used against him. You're both entitled to attorneys at all stages of these proceedings and if either of you claim that you do not have sufficient funds of your own to hire an attorney you can apply to the court for assignment of an attorney and if

we're satisfied that you don't have enough money of your own to hire one we will assign one to represent you without charge to you. Mr. Daniel Yoder, do you have an attorney?

DANIEL YODER: No.

THE COURT: Do you have money to get an attorney?

DANIEL YODER: No.

THE COURT: Do you want an attorney?

DANIEL YODER: Need one I GUESS.

THE COURT: And how about you, Michael Yoder?

MICHAEL YODER: I haven't got no money for an attorney.

THE COURT: Do you want an attorney?

MICHAEL YODER: Yes.

THE COURT: Alright. Are you related to each other?

MICHAEL YODER: Yes.

THE COURT: What's your relationship?

MICHAEL YODER: We're brothers.

THE COURT: Alright, I'm going to require that each of you fill out an affidavit of financial status. Upon completion of that I will look at it and if I'm satisfied on the basis of that that you're entitled to an attorney I will assign one to represent you. I'm going to ask each of you a couple of preliminary questions relative to that.

(Whereupon the defendants were questioned by the court relative to their financial status)

THE COURT: Daniel, do you swear the statements you gave

me as to your assets are true?

DANIEL YODER: Yes.

THE COURT: Michael, do you swear to me that the statements you gave me as to your assets are true?

MICHAEL YODER: Yes.

THE COURT: Alright, on the basis of those statements I am going to assign an attorney but I do want - I intend to but I want to look at the written affidavits first. My secretary will give you those affidavits. You can prepare them and you can file them with me or send them to me. I'll try to make arrangements to have an attorney to advise you by tomorrow. So you won't be formally arraigned at this time until such time as you have attorneys present with you. I'm going to adjourn that until ten o'clock tomorrow. You are to appear in this court by ten o'clock tomorrow; you are to have these affidavits before that time and I will make arrangements to have counsel present for you. Pending that appearance I'm required to set bail and satisfy myself that each of you will be here in court when you're requested to be here. Is there any recommendation from the Government?

MR. WAGNER: Well, your honor, yes there is. My understanding is that the two gentlemen here have cooperated with the FBI Agents when they were

arrested and one of them surrendered today and they further have indicated that they intend to further cooperate this afternoon with the agents. Because of the agents' request to me and the representations in this respect we feel that releasing the defendants on some form of recognizance bond is in order in this case, rather than asking for a large cash bail, in spite of the fact that it's a very serious offense.

THE COURT: Well, this is a very serious offense. Daniel Yoder, if you're released on your recognizance at this particular time are you assuring me that you'll be back in this court tomorrow at ten o'clock?

DANIEL YODER: Yes sir.

THE COURT: How about you Michael, do you give me the same assurance?

MICHAEL YODER: Yes.

THE COURT: Alright, I'm going to require each of you to sign a \$5,000 recognizance bond. The terms of each of these bonds are that you appear tomorrow morning at ten o'clock for formal arraignment and at such other time as you're directed by the court to appear. If you fail to appear whenever you're directed to appear there's going to be a judgment taken against that person for the sum of \$5,000. He's going

to have a warrant issued against him on this bank charge; he's also subject to having a second separate and distinct charge placed against him of bail jumping which would also be a felony. While this charge is pending you are not to leave the Western District of New York. That's the seventeen western counties of New York State. If you are found outside of this district, you can subject yourself to a change in the terms of your bail or to arrest. Those are the bonds that generally set out the terms as I indicated to you. If either of you have any questions you can raise them at this time. If you understand the terms of the bond I want you to sign your name, your address and a phone number at which you can be reached where it says name of defendant.

MICHAEL YODER: No questions.

THE COURT: Alright, these are the bond forms.

(Whereupon the bonds were signed by the defendants)

THE COURT: I'm going to change the time of that arraignment from ten o'clock tomorrow until eleven o'clock tomorrow and I want the affidavits filed in here if at all possible by ten o'clock, so that I can make arrangements and have attorneys talk to you beforehand. You're also going to be required to be processed by the United States

Marshal tomorrow morning prior to the arraignment or immediately after the arraignment, so it's expected that both of you will be in court tomorrow morning at eleven o'clock here. You can call - if you want to stop in at the office prior to that time we may have, should have the names of the attorneys for you then. Do either of you have any questions?

MICHAEL YODER: No sir.

THE COURT: Alright, you're released on these bonds which you have already signed. Do you understand the terms of the bond, Mr. Daniel Yoder?

DANIEL YODER: Yes.

THE COURT: Do you have any questions?

DANIEL YODER: No.

THE COURT: Michael Yoder, how about you?

MICHAEL YODER: No sir.

THE COURT: Do you realize what happens to you if you don't show up in court?

MICHAEL YODER: Yes sir.

THE COURT: Alright.

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**Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.**

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

1 PROCEEDINGS OF JANUARY 3, 1977, COMMENCING AT 4 P.M.

2

3

(Defendants present, counsel present.)

4

5

(Government's Exhibits 1 through 15 were pre-
marked for identification.)

6

7

8

THE COURT: All right, United States versus Brian Buchanan,
Daniel Yoder and Michael Yoder. Mr. Lamantia
representing Brian Buchanan, is Mr. Buchanan
here?

9

10

11

12

MR. LAMANTIA: Yes, your Honor.

13

THE COURT: Mr. James Harrington representing Daniel Yoder,
is Mr. Daniel Yoder here?

14

15

MR. HARRINGTON: Yes, your Honor.

16

THE COURT: Mr. Mark Mahoney representing Michael Yoder, is
he here?

17

18

MR. MAHONEY: Yes, your Honor.

19

THE COURT: And Mr. Wagner for the Government. As I under-
stand it, it is contended by the Government
that statements were given by all defendants,
and we are here on the defendants' motion to
suppress evidence of those statements, is that
correct?

20

21

22

23

24

25

MR. WAGNER: That is correct, your Honor.

- 1 THE COURT: All right, I am ready to proceed.
- 2 MR. WAGNER: Before starting, I would like to put on the
- 3 record that in preparation for the hearing
- 4 I was examining a report, and I determined
- 5 that there was some additional material that
- 6 I would normally like to have given the
- 7 defendants for the discovery. I have available
- 8 three copies, one for each of them, and I
- 9 will hand them to them at this time.
- 10 THE COURT: What are you giving them?
- 11 MR. WAGNER: Copies of an FBI report.
- 12 THE COURT: 302's?
- 13 MR. WAGNER: 302's. So the record is clear, they out of
- 14 the FBI report, and they are labelled Pages
- 15 75 through 80, 80(a), 80(b), 80(c), 80(f),
- 16 and 80(g). They may have some relevance to
- 17 the hearing if they should want to use them.
- 18 THE COURT: All right.
- 19 MR. WAGNER: My first witness is Mr. Thomas Gray.
- 20
- 21 THOMAS ALVA GRAY, JR., 6046 Berkley Drive,
- 22 Orchard Park, New York called as a witness on behalf of the
- 23 Government, and being first duly sworn, testified as follows:
- 24
- 25 DIRECT EXAMINATION BY MR. WAGNER:

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

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- 1 Q. Mr. Gray, I would like you to tell the Court what your
2 occupation is?
- 3 A. I'm a special agent with the Federal Bureau of Investigation.
- 4 Q. Approximately how long have you been with the FBI?
- 5 A. About eleven years.
- 6 Q. Could you describe briefly what your duties are with the
7 FBI?
- 8 A. I investigate violations of federal laws that are under
9 the jurisdiction of the FBI.
- 10 Q. Mr. Gray, in the course of your duties as an FBI agent
11 are you assigned to a particular location or jurisdiction?
- 12 A. Yes, I am assigned to our office in Buffalo, New York.
- 13 Q. Do you have a certain area of the community that you engage
14 in your investigations in?
- 15 A. Currently I am given the area in Genesee and Wyoming
16 County and rural Erie County.
- 17 Q. Did there come a time, sir, that a bank was robbed in
18 Wyoming County, the Strykersville Office of the Bank of
19 Wyoming?
- 20 A. Yes, on October 20, 1976 the Strykersville Office of the
21 Wyoming County Bank, Route 72, Strykersville, New York,
22 was robbed.
- 23 Q. I would like you to tell us, sir, if in the course of your
24 duties you had occasion to investigate that robbery and
25 generally what you did after the robbery?

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

- 1 A. I went to the bank the day it was robbed with other FBI
2 agents and we talked with the bank employees, and there-
3 after followed leads that we developed throughout some
4 counties in Western New York until such time as we began
5 developing suspects.
- 6 Q. Did you develop any suspects, sir?
- 7 A. Yes, we did.
- 8 Q. Would you tell us the names of those people, please?
- 9 A. Yes, Brian Buchanan, Daniel Yoder and Michael Yoder.
- 10 Q. With respect to the first individual, sir, Mr. Buchanan,
11 did you have occasion to ever make contact with Mr.
12 Buchanan?
- 13 A. Yes, I did.
- 14 Q. Would you describe how that came about, what occurred at
15 that time, and tell us when it was?
- 16 A. He appeared at the Buffalo Office of the FBI on November 3,
17 1976.
- 18 Q. Had you ever talked with Mr. Buchanan prior to this?
- 19 A. Not in person, but I did get a telephone call the previous
20 night from an individual who identified himself to me as
21 Brian Buchanan.
- 22 THE COURT: What date was that?
- 23 THE WITNESS: That was November 2, 1976 that I receive
24 the telephone call.
- 25 MR. COUNSEL:

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

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- 1 Q. I will show you Government's Exhibit 5 for identification,
2 can you tell us what that is, sir?
- 3 A. This is the consent to search form that Mr. Buchanan signed
4 concerning his Chevrolet.
- 5 Q. That is what you testified about earlier?
- 6 A. Yes. That was on November 4, 1976.
- 7 Q. Now, Mr. Gray, I would like you, sir, if you would, to
8 pick up with my earlier question about Michael Yoder and
9 tell us, as best you recall, when it was that you met
10 Michael Yoder and the circumstances which gave rise to that
11 meeting, if you know?
- 12 A. I believe it was on November 22, 1976 that he appeared at
13 the Buffalo Office of the FBI.
- 14 Q. You said November 22nd?
- 15 A. I believe so, if I remember right.
- 16 Q. Mr. Gray, is there anything that I can use perhaps to
17 refresh your recollection? Do you recall whether or not
18 that was before Mr. Michael Yoder was indicted?
- 19 A. Wait a minute, I think November 22nd is wrong, I think it
20 was November 11, 1976.
- 21 Q. That was when you first met Michael Yoder?
- 22 A. Yes.
- 23 Q. How was it that you came to be looking for Michael Yoder
24 generally?
- 25 A. Well, just in our general investigation, routine investigation

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

- 1 I developed him as a possible suspect.
- 2 Q. Had you made an attempt to locate Michael Yoder?
- 3 A. Yes.
- 4 Q. Then you say there came a time when he came to your office?
- 5 A. Yes.
- 6 Q. Do you know how that was that Michael Yoder came in?
- 7 A. As I recall, I believe I got a telephone call from him, too,
- 8 saying that he wanted to come in.
- 9 Q. As best you recall, you set up an appointment with him?
- 10 A. Yes, I believe so.
- 11 Q. You said that Mr. Yoder come in, and you said that your
- 12 best recollection is that it was November 11th?
- 13 A. Yes.
- 14 Q. And that was at the FBI Office in Buffalo?
- 15 A. Yes.
- 16 Q. Do you recall, sir, who else was present at that time?
- 17 A. Another special agent, John Poerstal.
- 18 Q. Do you know how to spell his last name?
- 19 A. P-o-e-r-s-t-a-l.
- 20 Q. During that interview was there any practice by you to
- 21 keep any record concerning the interview?
- 22 A. Yes, I maintained an interview log.
- 23 Q. Showing you Government's Exhibit 6 for identification, I
- 24 would like you to look at that, if you would, and tell us
- 25 what that is?

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

1 A. This is the interview log I maintained in connection with
2 interviewing Michael Yoder on November 11, 1976.

3 Q. By the way, does that refresh your recollection as to the
4 exact date of the --

5 A. Yes, it does.

6 Q. -- interview?

7 A. Yes.

8 Q. What is that date?

9 A. November 11, 1976.

10 Q. Can you tell us, sir, what occurred when Mr. Yoder came
11 in to see you, as best you recall?

12 A. I advised him of my identity as a special agent of the
13 FBI, and Special Agent Poerstal did the same. I read him --
14 I told him what the purpose of the interview was --

15 Q. What did you say?

16 A. It concerned the robbery of the Strykersville Office of
17 the Wyoming County Bank, Route 78, Strykersville, New York,
18 on October 20, 1976. I read him a form entitled Interrogation
19 Advice of Rights. He told me that he understood the con-
20 tents of this form, he signed the form, and he gave me
21 information concerning the bank robbery.

22 Q. I show you Government's Exhibit 7 for identification, and
23 I would like you to examine that and tell us what that is,
24 if you know?

25 A. This is the Advice of Rights form that I read to Mr. Michael

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

1 Yoder.

2 Q. Do you see any signatures on that form, sir?

3 A. Yes, Michael Yoder's signature, I watched him sign it, and
4 my signature, I witnessed it, and Mr. Poerstal's signature,
5 he also witnessed it.

6 Q. You were there when Mr. Poerstal signed it, sir?

7 A. Yes, I was.

8 Q. When that particular form, Government's Exhibit 7, was
9 read to the defendant, do you recall whether or not he
10 asked you any questions about it?

11 A. I'm not sure whether he did or not. He may have asked
12 questions about it, I can't recall.

13 Q. You have no recollection of him asking questions, is that
14 right?

15 A. I think he may have asked how he got an attorney appointed
16 for him, I'm not sure, I think he may have.

17 Q. Do you recall what you said to him in response to that?

18 A. I told him that we did not appoint an attorney, but that
19 the Court could appoint an attorney if and when he were
20 charged formally with a federal violation, and if he
21 qualified for an attorney, one to be paid for by the
22 Government.

23 Q. Do you recall if you offered Mr. Yoder the opportunity to
24 leave your office at that time?

25 A. I don't recall, but I am sure that I did tell him that he

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

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1 was not under arrest, that he was free to go anytime he
2 wanted.

3 Q. What did Mr. Yoder tell you with respect to giving infor-
4 mation concerning this robbery you were investigating?

5 A. I'm sorry, would you repeat that, please?

6
7 (Thereupon the last question was read by
8 reporter.)
9

10 THE WITNESS: Mr. Yoder told me that he was one of the
11 individuals that robbed the Wyosing County
12 Bank at Strykersville on October 20th, along
13 with two other individuals.

14 BY MR. WAGNER:

15 Q. Did you tell Mr. Yoder that he did not have to give you
16 that statement, in light of his earlier concern about an
17 attorney?

18 A. I told him that he did not have to make any statement to
19 me.

20 Q. Mr. Gray, did Mr. Yoder produce all of this information
21 to you orally at that time?

22 A. He gave me the information orally and then, as I recall,
23 I asked him if he wanted it in the form of a written
24 statement, and he indicated that he did and, as I recall,
25 I went and got a stenographer in our office again and

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

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1 longhand, and Michael Yoder and I read this statement.

2 Q. When you say "this statement" you are referring to Govern-
3 ment's Exhibit --

4 A. No, we read -- the other statement I am talking about, the
5 handwritten one.

6 Q. So the record is clear, showing you Government's Exhibit
7 9 for identification, I will ask you, sir, if you can
8 recognize that?

9 A. Yes, that is the handwritten statement I am talking about.

10 Q. Perhaps you can go back to what you were saying and this
11 time refer to the various exhibits by there numbers.

12 A. Exhibit 8 is the typewritten statement that Michael Yoder
13 and I read together and we did make some corrections, and
14 he initialled each page, initialled the corrections, and
15 he wrote a little paragraph at the end of it, and signed
16 it and dated it, and Mr. Poerstal and I also signed it,
17 witnessed it.

18 Q. Can you tell us what the purpose was of writing out the
19 second handwritten statement?

20 A. I anticipated it being of short length, rather than getting
21 the stenographer again and dictating and having it typed
22 and brought back, I thought I would write it out in long-
23 hand.

24 Q. Why did you have two separate statements?

25 A. The second statement names one of the other individuals

1 involved in the bank robbery.

2 Q. And the first one does not?

3 A. The first one names only Michael Yoder and says that he
4 did it with two other individuals.

5 Q. When you say "first," you are referring to Government's
6 Exhibit 8?

7 A. Yes.

8 Q. And the second one you refer to is Government's Exhibit 9?

9 A. Yes.

10 Q. Mr. Gray, would you tell us, sir, what happened after Mr.
11 Yoder signed those statements, did you have any further
12 conversation with him, if you recall?

13 A. I think at that time I may have asked him if he would take
14 us to what was left of his share of the bank robbery money,
15 and he told me that he did not want to do that, but he did
16 tell me that he would go get that himself and, as I recall,
17 he said he would bring it in to me the following day.

18 Q. Did you have any further conversation with him that day,
19 on November 11th?

20 A. Well, he indicated that he would bring the money in the
21 following day, and then he left.

22 Q. Now, did you see him the next day, by the way, sir?

23 A. As I recall, he did not come in the following day, and I
24 did not see him again until November 13, 1976.

25 Q. Now, did you know, sir, that an indictment was returned

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

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1 against Mr. Michael Yoder, and also Mr. Daniel Yoder and
2 Mr. Buchanan?

3 A. As I recall, I learned on November 17, 1976 that Brian
4 Buchanan, Daniel Yoder and Michael Yoder were all indicted
5 by a federal grand jury in Buffalo for the bank robbery of
6 this bank at Strykersville on October 20th.

7 Q. Did you learn, sir, at the same time or shortly thereafter
8 that there were warrants issued for Mr. Michael Yoder and
9 Mr. Daniel Yoder?

10 A. Yes, on the following day, which would have been November
11 18, 1976, I learned that a federal bench warrant had been
12 issued for the arrest of Daniel Yoder and Michael Yoder.

13 Q. Mr. Gray, pursuant to those warrants, did you have any
14 role in attempting to locate and/or locating Mr. Michael
15 Yoder for the purposes of arresting him?

16 A. Yes, I did have.

17 Q. Can you describe what you did in that respect?

18 A. Yes. Special Agent Neil Heiner and myself went in one
19 FBI car, Special Agents Thomas Langer and Charles Patrick
20 went in another FBI car, and we drove to southern Erie
21 County, and we met with an investigator from the Wyoming
22 County Sheriff's Office, David Davis, and two investigators
23 from the New York State Police at Warsaw, New York, Orville
24 Smith and Freeman Shaw, and then we proceeded over to the
25 Village of Sardinia, New York. This must have been shortly

1 after noon. We had information that Daniel Yoder was
2 residing in an apartment above the supply store building
3 in the Village of Sardinia. We went there and Special
4 Agent Langer and myself went upstairs above this supply
5 store, or whatever it was, and knocked on the door. Inves-
6 tigator Davis and Investigators Shaw and Smith, and Special
7 Agents Heiner and Patrick were outside the building in the
8 event that Mr. Yoder attempted to get away that they would
9 be able to stop him. I knocked on the door at the top of
10 the stairs and a man opened the door. I asked him if he
11 was Daniel Yoder and he said that he was. I identified
12 myself as a special agent with the FBI, and Special Agent
13 Langer did the same thing. I told him, Daniel Yoder, that
14 he was under arrest for the robbery of the Wyoming County
15 Bank, Route 78, Strykersville, New York, on October 20,
16 1976. We searched Daniel Yoder for any weapons, found
17 none, and Special Agent Patrick came into the apartment
18 about that time, and we let Daniel --

19 THE COURT: Were you all inside the apartment?

20 THE WITNESS: The three of us were at the point, your
21 Honor. We let Mr. Yoder get dressed, fully
22 dressed, and we handcuffed him, and Special
23 Agents Langer and Patrick took him downstairs
24 and outside to the FBI car. I asked them if
25 they would take him out to the car, that I

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

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1 would be out in just a few minutes. I went
2 out in a few minutes and got into the car
3 with Special Agents Patrick, Langer and Heiner,
4 and Daniel Yoder was in the car then. I asked
5 if Daniel Yoder had been advised of his rights,
6 and Special Agent Langer told me that he had.
7 I asked Daniel Yoder if he had been advised
8 of his rights, and he said he had, that he
9 understood them. I asked him if he understood
10 that he was being arrested for the bank robbery
11 at Strykersville, and he said he understood
12 that, and I asked him if he had any questions
13 about it, and he said he did not. I asked
14 him if he wanted to make any statement at
15 that time, and he said no, he did not. I
16 asked the other agents if they would take him
17 back to the office, and that I would continue
18 looking for Michael Yoder, and that I would
19 then return to the office where they were.

20 BY MR. WAGNER:

21 Q. Do you know if they left with Mr. Yoder at that time?

22 A. Yes, they did.

23 Q. What did you do?

24 A. I went back upstairs and talked with -- I think the fellow's
25 name was Wayne Stadlmyer -- he indicated that he was renting

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

1 that apartment. There was another gentleman with him, I
2 don't recall his name. I asked them if Mr. Yoder had left
3 any money, had any money laying around there, and they
4 indicated that -- let's see -- Mr. Stadlmyer told me --

5 MR. HARRINGTON: Objection, your Honor, hearsay. I don't see
6 what relevance it has to this proceeding.

7 THE COURT: That is right, what someone said is not
8 important.

9 BY MR. WAGNER:

10 Q. Did you find anything in the apartment at that time?

11 A. No.

12 Q. What did you do, did you subsequently return to your office?

13 A. No -- well, I did eventually, but I started looking for
14 Michael Yoder.

15 Q. You were unable to find Michael Yoder?

16 A. Yes, I was.

17 Q. You went back to your office?

18 A. I got a call on the radio to call the office. I called
19 and they said that they had received a call from somebody
20 who said he was Michael Yoder, that he was coming in to
21 surrender.

22 Q. You returned to the office then?

23 A. Yes, I returned to the office.

24 Q. Can you tell us, sir, when you got back to the office --
25 you did get back to the office?

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

- 1 A. Yes.
- 2 Q. When you got back there, sir, did you encounter either of
- 3 the two Yoder boys at that time?
- 4 A. Yes. Almost immediately after I went into the office, I
- 5 went into a room where Daniel Yoder was sitting, and
- 6 Special Agent Heiner was with me, if I recall, and I at
- 7 that time again identified myself, and Mr. Heiner did,
- 8 as special agents with the FBI, and advised Daniel Yoder
- 9 that we wanted to talk to him about the bank robbery at
- 10 Strykersville on October 20th. I read him a form entitled
- 11 Interrogation Advice of Rights, if I remember, and he said
- 12 he understood this form and, as I recall, he declined to
- 13 sign it.
- 14 Q. Showing you Government's Exhibit 12 for identification,
- 15 I would like you to examine that, please, and tell us what
- 16 that is, if you know?
- 17 A. This is the rights form I was referring to, the one that
- 18 I read to Daniel Yoder on November 18, 1976, when I
- 19 returned to our office in Buffalo.
- 20 Q. There is some handwriting at the bottom of that page, sir,
- 21 is that correct?
- 22 A. Yes, that is my handwriting.
- 23 Q. Can you tell us how that got on there?
- 24 A. When he said he understood it and he declined to sign it,
- 25 I wrote on there that I had read the form to him and that

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1 he said he understood it but he declined to sign it, but
2 he did agree to furnish information without an attorney
3 being present.

4 Q. Do you recall if Daniel Yoder asked you for an attorney
5 at the time?

6 A. He inquired about -- I believe he inquired about an attorney
7 being appointed for him.

8 Q. What did you tell him, as best you recollect?

9 A. I explained to him that we did not appoint the attorneys,
10 but the court system could appoint an attorney for him if
11 he qualified for it, if he could not afford one himself.
12 Let's see -- I believe that is it essentially.

13 Q. Did you tell Mr. Yoder, if you recall, that he did not have
14 to talk to you at that time?

15 A. Yes, I told him that he did not have to answer any questions.

16 Q. What did he say to that comment by you, if anything?

17 A. Well, he said he would tell me about the bank robbery.

18 Q. By the way, at this time did you again keep an interview
19 log with respect to this conversation you had with Daniel
20 Yoder?

21 A. Yes. This was an interview log that covered all of the
22 agents' conversations with him, it covered the arrest --

23 Q. Can you tell us, sir, how that interview log was prepared?

24 A. As I recall, I wrote out one complete interview log myself,
25 and I did it on the basis of the conversations I had with

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- 1 him and also on the conversations that the other agents
2 had with him.
- 3 Q. Showing you Government's Exhibit 10 for identification, can
4 you tell us what that is, sir?
- 5 A. Yes, this is the arrest and interview log I was referring
6 to concerning Daniel Yoder on November 13, 1976.
- 7 Q. Mr. Gray, is it your testimony that you did not in fact
8 witness all of the events set forth in the interview log?
- 9 A. No, I did not.
- 10 Q. Perhaps you can explain, again so the record is clear, how
11 it was that you knew what to put on the interview log when
12 you prepared it?
- 13 A. Different agents, who had something to do with his arrest
14 and processing and interview, maintained notes as to the
15 times that they did or said something to Mr. Yoder, and
16 then each of these agents furnished this information to
17 me, and when they gave me the information, I put in there
18 what they had done at the times they had done it.
- 19 Q. Do you know what happened to their notes from which you
20 prepared the log?
- 21 A. I'm not positive, I think they probably destroyed their
22 notes as to times, and so forth.
- 23 Q. Do you know, sir, if you read over the interview log,
24 Government's Exhibit 10 for identification?
- 25 A. Yes, I did.

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1 Q. As far as the events which you had personal knowledge of,
2 is that accurate?

3 A. Yes.

4 Q. Can you tell us, sir, if at any time Mr. Daniel Yoder did
5 provide you with an oral statement concerning his involve-
6 ment at the particular bank which is the subject of the
7 indictment?

8 A. Yes, he told me that he robbed the Strykersville Office of
9 the Wyoming County Bank, Route 78, Strykersville, New York,
10 on October 20, 1976.

11 Q. And that occurred after you advised him of his rights, as
12 you earlier testified?

13 A. Yes.

14 Q. Following that statement, that oral statement from Mr.
15 Yoder, can you tell us whether or not any written statement
16 was prepared?

17 A. No, no written statement was prepared.

18 Q. Did you have any further conversation with Mr. Daniel
19 Yoder that day, sir?

20 A. Yes this went on for quite a period of time that day.

21 THE COURT: How long?

22 THE WITNESS: We arrested him at 12:30 P.M., during the
23 afternoon sometime --

24 THE COURT: How long did it take to take him into the
25 office?

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1 THE WITNESS: If I can refer to this log I can answer that.
2 THE COURT: No. You know the distance, how long would it
3 take?
4 THE WITNESS: It must take somewhere around an hour to
5 travel back to Buffalo.
6 THE COURT: All right.
7 THE WITNESS: Then we were in the office for a period of
8 time, he had to be fingerprinted and photo-
9 graphed.
10 THE COURT: How long does that take?
11 THE WITNESS: Oh, that may take an hour or so, something
12 like that, your Honor. He had been finger-
13 printed and photographed, as I recall,
14 whenever I arrived back at the office. I
15 think this was somewhere in the neighborhood
16 of 3 P.M.
17 THE COURT: On Thursday?
18 THE WITNESS: I don't recall the day of the week.
19 THE COURT: The date the warrant's issued?
20 THE WITNESS: Yes, November 18, 1976.
21 THE COURT: That was a Thursday.
22 THE WITNESS: After I had interviewed him -- that interview
23 took somewhere around a half an hour -- then
24 we took Daniel Yoder and Michael Yoder to the
25 office of the United States Magistrate in

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1 Buffalo.

2 BY MR. LAWLER:

3 Q. Mr. Gray, I think perhaps you are jumping ahead. When was
4 it that Michael Yoder came onto the scene on November 18th?

5 A. I was told that he had arrived at the Buffalo Office of
6 the FBI just a few minutes before I arrived there on
7 November 18, 1976. That would have been somewhere around
8 3 P.M., I think. After I interviewed Mr. Daniel Yoder, I
9 then went to another room where Mr. Michael Yoder was
10 sitting, and I interviewed him.

11 Q. That occurred on the same day, is that correct?

12 A. Yes.

13 Q. Mr. Michael Yoder was there pursuant to an arrest warrant
14 also?

15 A. Yes he had been -- I was told by Special Agent Langer that
16 he had been arrested when he came into the FBI Office to
17 surrender.

18 Q. Mr. Michael Yoder arrived at the office, and you say you
19 interviewed him also, sir?

20 A. Yes, I did.

21 Q. Did you keep a log of that interview or was one kept by
22 other agents, if you know?

23 A. As I recall one was maintained. I don't believe I main-
24 tained that particular interview log, another agent did.

25 Q. Showing you Government's Exhibit 12(a), for identification.

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1 I will ask you to look at that, and if you can recognize
2 it, tell us what that is, please?

3 . Okay. This is the arrest and interview log concerning
4 Michael Yoder on November 18, 1976, and actually the first
5 page of it is prepared by me, and the second page is pre-
6 pared by someone else.

7 Q. The page that was prepared by you, Mr. Gray, can you tell
8 us if that was accurate, as best you could recall, con-
9 cerning the times and events which are set forth on it?

10 A. Yes, it is accurate, as far as I know. I reviewed this
11 and signed it.

12 Q. Can you tell us, sir, if the other events listed on the
13 log, which was not prepared by you, conformed to your
14 recollection of the events and times?

15 A. Yes.

16 Q. Can you tell us, sir, if you had any conversation with
17 Mr. Michael Yoder at that time?

18 A. Yes, I did have.

19 Q. Can you tell us, sir, what the conversation involved?

20 A. Well, I asked him if he had been advised of his rights,
21 and he told me that he had and understood them. Special
22 Agent Langer was there, and he told me that he had advised
23 Michael Yoder of his rights.

24 A. Who else was there beside you and Michael Yoder and Special
25 Agent Langer?

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- 1 A. I believe Special Agent Patrick was right in that area at
2 the time.
- 3 Q. I would like you to tell us what else you said to Mr.
4 Michael Yoder and what he said to you, if anything?
- 5 A. I asked him if he was -- I asked him about the money, his
6 share of the money from the bank robbery. I said, "You
7 never showed up the next day the way you told me you would
8 with the money." I said, "How about taking us to the
9 money or tell us where the money is?" He agreed to tell
10 me where the money was, and then he did so.
- 11 Q. Now, when he did so, can you tell us what he told you, as
12 best you recall?
- 13 A. Well, he told me that the money was in the vicinity of
14 the property belonging to -- I think the name of the people
15 was Pickering, something like that -- I think it was on
16 Ham Road in -- maybe in the Town of Chaffee, New York or
17 the Town of Sardinia. I think it was in Chaffee, in
18 southern Erie County.
- 19 Q. Did you have any further conversation with Mr. Michael
20 Yoder at the time or anytime after that?
- 21 A. I don't recall other conversations after that day. We
22 did take Daniel and Michael Yoder over to the United
23 States Magistrate in Buffalo, and then Michael Yoder --
24 after they were -- Daniel and Michael Yoder were released
25 on \$5,000 recognizance bond by the United States Magistrate

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1 in Buffalo that day, why Michael and Daniel Yoder agreed
2 to accompany us -- actually they agreed to accompany us
3 before we took them to the Magistrate -- they were going
4 to accompany us to get the money. Michael Yoder went with
5 Special Agent Heiner and the two investigators from the
6 New York State Police, Smith and Shaw, in a State Police
7 car, and Daniel Yoder went with me in an FBI car, and also
8 Wyoming County Investigator David Davis went with us.

9 Q. Can you tell us where you went and if there came a time
10 you actually found any money?

11 A. At the direction of Mr. Daniel Yoder, I drove down Route
12 16 in southern Erie County. He told me that he had some
13 of the money hidden outside Brush Gardens Bar, it is also
14 called Ranch House Bar, on Route 16 in Chaffee, New York,
15 that the owner of this bar, this property was -- I forget
16 the guy's first name -- Brush is his last name, and that
17 he lived on Route 16 between Chaffee and Holland, New York,
18 and we looked for that residence. It was difficult to
19 find, and we eventually located it, and I talked with Mr.
20 Brush, and he told me I could search his property, you
21 know, for any possible evidence, and so forth.

22 Q. You did eventually search the property?

23 A. Yes.

24 Q. Was Mr. Yoder with you at that time?

25 A. Yes, he was.

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- 1 Q. Mr. Daniel Yoder?
- 2 A. Right.
- 3 Q. Can you tell us if you found anything?
- 4 A. Yes, we found some currency in bills.
- 5 Q. Briefly, where was that located?
- 6 A. It was, as I recall, the southeast corner of the building,
- 7 outside the building, adjacent to the building, under some —
- 8 I think it was grain in a plastic bag.
- 9 Q. Do you recall, sir, if Mr. Daniel Yoder told you anything
- 10 about this money when you were there?
- 11 A. He told me that that was what was left of the bills of his
- 12 share of the money that he got from robbing the bank at
- 13 Strykersville on October 20th.
- 14 Q. Did he make any reference to you, sir, at that time or
- 15 thereafter concerning the coins?
- 16 A. Yes, he told me that he had the coins that were left from
- 17 his share of the bank robbery money at another location,
- 18 and directed me to that location. We drove there. It was
- 19 on Pigeon Hill Road in the Town of Farmersville, New York,
- 20 the same area where we had previously recovered money with
- 21 Mr. Buchanan's assistance.
- 22 Q. Did you find some coins at that time?
- 23 A. Yes, we did. They were out in the field under another
- 24 rock pile.
- 25 Q. Can you tell us, Mr. Gray, if you prepared any written

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1 document showing what monies were found and the denomina-
2 tions?

3 A. Yes, we counted the money. As I recall, I counted it and
4 Mr. Heiner counted it and Daniel Yoder counted it. We
5 agreed on the amounts, and we made a list concerning the
6 bills and made a list concerning the coins.

7 Q. Showing you Government's Exhibit 13 for identification,
8 can you tell us what that is, please, if you know?

9 A. Yes, this is the list concerning the bills recovered on
10 November 18, 1976 in Chaffee, New York, and it is signed
11 by me and by Daniel Yoder and by David Davis.

12 Q. Let me show you Government's Exhibit 14 for identification.

13 A. That is the list concerning the coins recovered in the
14 Town of Farmersville, New York on November 18, 1976, signed
15 by me and by Daniel Yoder and David Davis.

16 Q. Mr. Gray, Government's Exhibits 13 and 14 for identification
17 are carbon copies, is that correct?

18 A. Yes, they are.

19 Q. Do you know where the originals are?

20 A. Yes, they are together with the money that was recovered,
21 and it is locked up in a safety deposit box maintained by
22 the FBI for money that is evidence.

23 Q. Other than that, Mr. Gray, do you recall any further con-
24 versations you had that day with Mr. Daniel Yoder?

25 A. Oh, he wanted to be taken back to the apartment where we

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1 arrested him, and so I took him back there, then he wanted
2 to go over to Dutch Gardens Bar, and so I took him over
3 there.

4 Q. Was that the extent of your involvement with him that day?

5 A. I believe so.

6 MR. WAGNER: I have no further questions for Mr. Gray.

7 Thank you, sir.

8 THE COURT: All right, Mr. Lamantia.

9 MR. LAMANTIA: Can we have a conference at sidebar for a
10 moment?

11 THE COURT: Yes.

12
13 (Thereupon an off the record discussion
14 ensued at the sidebar between the Court and
15 counsel.)

16
17 THE COURT: It has been agreed as a result of a sidebar
18 conference that we will recess the suppression
19 hearing at this time and resume at four o'clock
20 on Wednesday, January 5th.

21
22 (Thereupon the court was in recess at 6 P.M.)
23
24
25

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1 A. No, he was not, wait a minute -- no, he was not.

2 Q. When was Mr. Buchanan first formally charged with a federal
3 violation?

4 A. November 17th.

5 Q. November 17th?

6 A. Yes.

7 MR. LAMANTIA: Thank you, sir.

8 THE COURT: Mr. Harrington?

9

10 CROSS EXAMINATION BY MR. HARRINGTON:

11 Q. Mr. Gray, when was the first opportunity in your investiga-
12 tion of this case that you had to speak with Daniel Yoder?

13 A. It was November 18, 1976.

14 Q. Was that at the time of his arrest?

15 A. Yes.

16 Q. Prior to his arrest on this occasion, had you made any
17 kind of check as to his prior involvement with the law or
18 criminal record?

19 A. I don't believe so.

20 Q. Did there come a time after he was arrested that you ran a
21 computer check or any check to determine whether he had
22 ever been arrested before?

23 A. I recall having run a check prior to arresting him.

24 Q. What did that check show?

25 A. The check I ran was to determine if there were any outstanding

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- 1 warrants for him.
- 2 Q. Were there any?
- 3 A. There were none.
- 4 Q. Did you determine that he had never been arrested before
- 5 for anything?
- 6 A. As I recall, I think I did a criminal history check, it is
- 7 a computerized system we use, and, as I recall, I got
- 8 nothing back on that.
- 9 Q. Now, on the occasion that he was arrested you already had
- 10 a warrant pursuant to the grand jury indictment, is that
- 11 correct?
- 12 A. Would you say that again?
- 13 Q. You had a warrant to arrest him on the 13th that was
- 14 pursuant to the grand jury indictment, is that right?
- 15 A. Yes.
- 16 Q. And you arrested him where, sir?
- 17 A. It was in the Village of Sardinia, New York, in Wayne
- 18 Stadlauer's apartment.
- 19 Q. What time of day was it?
- 20 A. Oh, it must have been around twelve twenty, something like
- 21 that.
- 22 Q. Just after noon sometime?
- 23 A. Right.
- 24 Q. And who was with you on that occasion?
- 25 A. Another special agent, Tom Langer.

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- 1 Q. Anyone else?
- 2 A. He was the only one present initially at the arrest. There
- 3 were other law enforcement officials in the general area.
- 4 Q. And did you enter the apartment that he was in on that
- 5 occasion?
- 6 A. Yes, I did.
- 7 Q. And how was Mr. Yoder dressed on that occasion?
- 8 A. I believe he had trousers on but no shirt or shoes or
- 9 socks.
- 10 Q. Did you advise him that he was under arrest?
- 11 A. Yes.
- 12 Q. Did you give him his rights on that occasion?
- 13 A. No.
- 14 Q. Did anyone give him his rights while you were present on
- 15 that occasion?
- 16 A. No.
- 17 Q. Were any questions asked of him on that occasion?
- 18 A. I asked him his identity.
- 19 Q. Did he give it to you?
- 20 A. Yes.
- 21 Q. And you placed him under arrest, is that right?
- 22 A. Yes.
- 23 Q. Did you handcuff him?
- 24 A. Not until he had the opportunity to get dressed.
- 25 Q. After he completed getting himself dressed, then did you

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- 1 handcuff him?
- 2 A. I searched him, too.
- 3 Q. Did you then handcuff him?
- 4 A. Yes.
- 5 Q. And who was present in the apartment when you handcuffed
- 6 him?
- 7 A. Special Agent Thomas Langer, and by that time possibly
- 8 Special Agent Charles Patrick may have been there. I'm
- 9 not exactly sure exactly when he came in.
- 10 Q. Mr. Yoder didn't offer any resistance to the arrest?
- 11 A. No.
- 12 Q. Had you ever received a message at your office telling you
- 13 where Mr. Yoder was, that he would be available if you
- 14 wanted to come and get him?
- 15 A. I don't understand that question. Would you repeat it?
- 16 Q. Prior to your arrest of Daniel Yoder, had you ever received
- 17 any information at your office that Mr. Yoder had contacted
- 18 your office and told them where he was, and if you wanted
- 19 to see him or arrest him or anything else, where he would
- 20 be?
- 21 A. I had developed information about where he was living. I
- 22 don't recall that he called the office and told us where
- 23 he was living.
- 24 THE COURT: The question is did anyone, Mr. Yoder or any-
- 25 body else, get in touch with you or any member

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- 1 of your office indicating Daniel Yoder was at
2 a certain place and would turn himself in?
- 3 THE WITNESS: Sir, I received that information from another
4 law enforcement officer.
- 5 THE COURT: When?
- 6 THE WITNESS: I don't recall, a few days prior to that.
- 7 THE COURT: All right.
- 8 BY MR. HARRINGTON:
- 9 Q. Now, did there come a time after Mr. Yoder was arrested
10 that he was led out of the apartment?
- 11 A. He was taken out of the — escorted out of the apartment.
- 12 Q. How long were you in the apartment on that occasion?
- 13 A. Just a few minutes, I think.
- 14 Q. And where was he when he was taken out?
- 15 A. He was taken downstairs and placed in a FBI car.
- 16 Q. And who did that?
- 17 A. Special Agents Thomas Langer and Charles Patrick, and
18 Special Agent Neil Heiner was involved in this, too. I
19 don't recall whether he helped take him downstairs or he
20 was just downstairs when they got there.
- 21 Q. Did you take him down yourself?
- 22 A. No.
- 23 Q. Did you observe them taking him down?
- 24 A. I observed them leave with him.
- 25 Q. And when was the next time that you saw him?
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- 1 A. Just a few minutes later.
- 2 Q. Where did you see him, then?
- 3 A. In the FBI car.
- 4 Q. Who was in the car then?
- 5 A. As I remember, Mr. Daniel Yoder was in the car, Special
- 6 Agents Thomas Langer, Charles Patrick and Neil Reiner.
- 7 Q. Did you get into the car on that occasion?
- 8 A. Yes.
- 9 Q. And did you have a discussion with Mr. Yoder on that
- 10 occasion?
- 11 A. Yes, I did.
- 12 Q. What did you ask him?
- 13 A. I asked him if he had been advised of his rights and he
- 14 said that he had, if he understood them, and he said he
- 15 did, if he understood that we were special agents of the
- 16 FBI and that he was under arrest for the robbery of the
- 17 Strykersville Office of the Wyoming County Bank, Route
- 18 78, Strykersville, New York, on October 20, 1976, and he
- 19 said that he did understand that. I asked him if he wanted
- 20 to make a statement concerning that bank robbery at that
- 21 time, and he said that he did not want to make any state-
- 22 ment at that time.
- 23 Q. Did he make any request while you were there for an attorney
- 24 to be given to him?
- 25 A. I don't remember any request at that time.

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- 1 Q. Did you, yourself, actually read him the rights?
- 2 A. No, Special Agent Langer told me that he had read the
- 3 rights to him.
- 4 Q. And Mr. Yoder acknowledged that they had been read to him?
- 5 A. Yes.
- 6 Q. On the occasion when you spoke with Mr. Yoder in the FBI
- 7 car, were you shown the advise of rights form that was
- 8 used on that occasion?
- 9 A. I don't remember.
- 10 Q. Did you have any conversation with FBI Agent Langer con-
- 11 cerning the Advice of Rights form?
- 12 A. Yes.
- 13 Q. And did he inform you that Mr. Yoder refused to sign the
- 14 Advice of Rights form?
- 15 A. I don't remember.
- 16 Q. Did you subsequently learn that in fact Mr. Yoder had
- 17 refused to sign the Advice of Rights form on that occasion?
- 18 A. Yes.
- 19 Q. When did you learn that, sir?
- 20 A. I don't remember, it could have been then, it could have
- 21 been back at the office or the next day, I don't recall.
- 22 Q. While Mr. Yoder was in the FBI car was he handcuffed at
- 23 that time, sir?
- 24 A. Yes, I am sure he was.
- 25 Q. Were his hands cuffed in front of him or behind him?

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- 1 A. I don't remember.
- 2 Q. What is your usual procedure when someone is placed under
- 3 arrest, do you put them in front or back?
- 4 A. Usually back.
- 5 Q. When you place somebody in the car do you leave their hands
- 6 cuffed in back?
- 7 A. Usually, unless it becomes uncomfortable, then we -- if we
- 8 feel we can change it and get him comfortable without any
- 9 danger, we will do that.
- 10 Q. When you spoke to Mr. Yoder in the car you also spoke to
- 11 Mr. Langer, is that right?
- 12 A. Yes.
- 13 Q. Did Mr. Langer indicate anything to you concerning Mr.
- 14 Yoder's request for an attorney at that time?
- 15 A. I don't remember.
- 16 Q. On that occasion Mr. Yoder gave you no statement, is that
- 17 right?
- 18 A. He didn't give me any statement concerning the robbery.
- 19 Q. How long were you in the car with Daniel Yoder?
- 20 A. A few minutes.
- 21 Q. And when was the next time you saw him?
- 22 A. At the FBI office in Buffalo.
- 23 Q. How much later was that from the time you had seen him in
- 24 the car?
- 25 A. It must have been around three o'clock in the afternoon the

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- 1 same day.
- 2 Q. So about two and a half hours later, is that right?
- 3 A. Yes.
- 4 Q. Where did you see him at the FBI headquarters?
- 5 A. He was in one of our interview rooms.
- 6 Q. Had you spoken to anybody who had escorted him from the
- 7 place of his arrest back to the FBI headquarters before
- 8 you spoke with Mr. Yoder at headquarters?
- 9 A. Yes.
- 10 Q. Who did you speak to?
- 11 A. Tom Langer.
- 12 Q. Did Mr. Langer indicate anything to you concerning the
- 13 conversation that he had had with Mr. Yoder on the way
- 14 from the point of arrest to FBI headquarters?
- 15 A. Yes.
- 16 Q. What did he tell you?
- 17 A. He said -- I think he said something like, 'He didn't make
- 18 any statement to me, but he wants to talk to you.'
- 19 Q. Did Mr. Langer indicate to you in any way the attempts he
- 20 had made to get information from Mr. Daniel Yoder on the
- 21 way down in the car?
- 22 A. No, I don't think so.
- 23 Q. When you saw Daniel Yoder at the FBI headquarters did you
- 24 at that time read him his rights, yourself?
- 25 A. Yes.

- 1 Q. And how was that done?
- 2 A. I read the form to him in its entirety.
- 3 Q. Did you read it out loud?
- 4 A. Yes.
- 5 Q. And did you give it to him to read?
- 6 A. Then I furnished it to him.
- 7 Q. Did he read it?
- 8 A. I don't know, I gave it to him to read.
- 9 Q. Did he look at it?
- 10 A. Yes.
- 11 Q. Did he appear to be reading?
- 12 A. Yes, it looked like he was looking at it.
- 13 Q. Did he say whether he understood it?
- 14 A. He said he understood it.
- 15 Q. Did he ask you for an attorney on that occasion?
- 16 A. I believe so, I believe he inquired about an attorney.
- 17 Q. What did you tell him?
- 18 A. I told him that one could be appointed for him if he didn't
- 19 have money to pay for his own attorney.
- 20 Q. Was that done?
- 21 A. Yes, the United States Magistrate appointed one for him.
- 22 Q. Was that right then when you spoke to him and read him his
- 23 rights at approximately three o'clock in the afternoon?
- 24 A. Yes.
- 25 Q. Was there anyone else appointed for him at that time?

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- 1 A. No, there wasn't any way to appoint one on the spot.
- 2 Q. That is reverting back to your testimony concerning the
- 3 appointment of an attorney for Brian Buchanan, is that
- 4 right?
- 5 A. No, this was a slightly different situation.
- 6 Q. All right. Mr. Yoder was under arrest at the time, is that
- 7 right?
- 8 A. That is right.
- 9 Q. The problem with -- the mechanical problem of appointing
- 10 an attorney was gone, as far as you were concerned, is
- 11 that right?
- 12 A. Well, all I had to do was get him over to the Magistrate,
- 13 and then it would be up to the Magistrate to determine
- 14 whether an attorney would be appointed for him or not.
- 15 Q. And when Mr. Yoder asked to have an attorney appointed,
- 16 did you take him over to the Magistrate at that point?
- 17 A. No.
- 18 Q. I show you Government's Exhibit 12, and ask you to look
- 19 at that and tell me if you can identify it?
- 20 A. Yes, this is the rights form that I read to Mr. Daniel
- 21 Yoder.
- 22 Q. And that form is not signed, is that right?
- 23 A. That is right.
- 24 Q. Did Mr. Yoder refuse to sign that form when it was read
- 25 to him and when he purportedly read it?

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1 A. Yes, he declined to sign it. He did say he understood
2 it, and he said that he would answer questions without an
3 attorney present.

4 THE COURT: Was that the rights form relating to the time
5 when you advised him of his rights?

6 THE WITNESS: Yes, your Honor.

7 BY MR. HARRINGTON:

8 Q. Did he tell you that he would answer questions after he
9 asked for an attorney, sir?

10 A. Yes, he did.

11 Q. Did there come a time that Mr. Yoder asked to make a
12 telephone call while he was at FBI headquarters?

13 A. I don't remember. I can't remember him making that request.

14 Q. Do you recall him telephoning his father from the FBI
15 headquarters?

16 A. I don't remember whether he did or not.

17 Q. Were you present with him from three o'clock approximately
18 when you first saw him at FBI headquarters until he was
19 taken to the United States Magistrate's Office?

20 A. For the entire time, no.

21 Q. Now, turning to Government's Exhibit 10, would you
22 look at this document and tell me if you can identify it?

23 A. That is the second interview log concerning the
24 arrest and interview of Daniel Yoder on November 13, 1976.

25 Q. If you turn now to the second page, the entry

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1 marked 3:04 P.M., it says, "Special Agent Gray --

2 A. That is correct.

3 Q. -- read Yoder form 'Interrogation of Rights' which Yoder
4 said he understood and declined to sign, but agreed to
5 answer questions without an attorney present," is that
6 right?

7 A. That is right.

8 Q. The next entry then is "Interview began at 3:09 P.M.," is
9 that right?

10 A. Yes.

11 Q. You made no notation on there of the fact he asked for an
12 attorney, is that right?

13 A. I don't see any on here.

14 Q. And I ask you to look at exhibit 10 again and tell me
whether there is any notation in there concerning Mr.
16 Yoder asking for the privilege of making a telephone call?

17 A. No, I don't see any.

18 Q. All right. Do you recall any conversation with Mr. Yoder
19 concerning a telephone call he had with his father from
20 the FBI headquarters, in which he said his father told
21 him not to say anything until he has spoken to an attorney?

22 A. No, I don't remember.

23 Q. You don't remember?

24 A. No.

25 Q. Sir, isn't a telephone call that somebody made while being

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1 interviewed at FBI headquarters, subsequent to an arrest
2 for a bank robbery charge, something that you would ordinarily
3 note in your interview log?

4 A. Yes, that could be noted on the interview log.

5 THE COURT: Could be or would be?

6 THE WITNESS: Could be. It wouldn't have to be, but I
7 would think that --

8 THE COURT: Would it normally be noted?

9 THE WITNESS: I would think that usually you would enter
10 something like that on the interview log, yes.

11 BY MR. HARRINGTON:

12 Q. When you discussed the trip downtown from the point of
13 arrest with Officer Langer, did he advise you at all that
14 Mr. Yoder had asked on more than one occasion for an
15 attorney to be appointed for him, before he would say any-
16 thing?

17 A. I think I do recall sometime -- I don't know when the
18 conversation took place -- but I believe sometime Mr.
19 Langer did tell me that Mr. Yoder had asked about an
20 attorney during the car ride. I think so.

21 Q. Now, what time of day was that that you took him over to
22 the United States Magistrate's Office?

23 A. I don't recall. It was probably before 4 P.M. perhaps.

24 Q. That same day?

25 A. Yes.

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1 Q. And prior to taking Mr. Yoder, Daniel Yoder, over to the
2 United States Magistrate, did you have any conversation
3 with him concerning the subject of bail?

4 A. I think I may have explained to him that bail and any
5 decision regarding bail is made by the United States
6 Magistrate, and that there's several alternatives, that
7 he can be -- let's see -- bail can be set, which would mean
8 he would have to make bail, but if he goes to a bail
9 bondsman, for a percentage of that the bail bondsman would
10 pay the bail, and then he would have to come up with a
11 percentage of that or if -- let's see -- a personal
12 recognizance bond can be set where there is an amount
13 specified but yet the person is still released without
14 paying any money, and if he fails to show up when the
15 court wants him there, why he is subject to the amount of
16 that bond, or no bond at all.

17 Q. Did you make any representations to Mr. Yoder concerning
18 what you could do regarding his bail situation once he
19 appeared before the United States Magistrate?

20 A. No.

21 Q. Did you tell him that if he assisted in the recovery of
22 the money that was taken from the bank that it would look
23 more favorable to the Magistrate in setting bail?

24 A. No, but I am sure I have indicated to at least one, or
25 maybe all of the three individuals involved in this matter,

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1 that anything they do, as far as helping recover money or
2 anything of that nature is concerned, would be furnished
3 to the United States Attorney's Office for their considera-
4 tion, and that a Magistrate would consider all the facts
5 before him, which would include anything like cooperation
6 in recovering money, and so forth.

7 Q. Was the information that Daniel Yoder supposedly gave to
8 you before he was arraigned on that day provided to the
9 United States Attorney and to the Magistrate?

10 A. Would you go over that again?

11 Q. Was the information that was supplied to you by Daniel
12 Yoder prior to arraignment on November 18th given to the
13 United States Attorney at the time of the arraignment,
14 and to the United States Magistrate?

15 A. Yes.

16 Q. It was?

17 A. Yes.

18 Q. Now, prior to your arrest of Daniel Yoder on November 18th,
19 you had already obtained statements from both Brian
20 Buchanan and Michael Yoder, is that correct?

21 A. I first obtained the statement from Brian Buchanan and
22 then one from Michael Yoder, and then we arrived at the
23 day of the 18th. Yes.

24 Q. You had statements from both of them, is that right?

25 A. Yes.

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1 Q. Isn't it also true, sir, that in the statement of both
2 of those persons that the name of Daniel Yoder had not
3 been given to you by those two individuals?

4 A. No, that is not true.

5 Q. Which one gave you his name?

6 A. Brian Buchanan told me that Daniel Yoder and Michael Yoder
7 had been the two with him.

8 Q. That is contained in your report?

9 A. Yes.

10 Q. After Mr. Yoder was arraigned, did you then accompany him
11 to a point away from the courthouse to attempt to look
12 for money which was supposedly taken in this robbery?

13 A. Yes, that is, Mr. Daniel Yoder.

14 Q. Gray. After the arraignment was Mr. Yoder in your custody
15 at that time, sir?

16 A. No.

17 Q. And prior to going to look for the money, did you read him
18 his rights again at that time, sir?

19 A. No.

20 Q. You did not. And did you ride in the same car with him
21 when you went to look for the money?

22 A. Yes.

23 Q. Did you have a conversation with him in the car?

24 A. Yes.

25 Q. Did that conversation pertain to the bank robbery in

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- 1 Strykersville that was in question here?
- 2 A. Yes.
- 3 Q. Did it pertain to the recovery of the money?
- 4 A. Yes.
- 5 Q. And did you have a conversation, aside from that in the
- 6 car, after the arraignment with Mr. Yoder at other places?
- 7 A. At the point where the money was recovered.
- 8 Q. And that pertained to the bank robbery also, is that right?
- 9 A. Yes.
- 10 Q. And on any of those occasions did you again read the rights
- 11 to Mr. Yoder?
- 12 A. No.
- 13 MR. HARRINGTON: I have nothing further.
- 14 THE COURT: Mr. Mahoney, do you have anything?
- 15
- 16 CROSS EXAMINATION BY MR. MAHONEY:
- 17 Q. Good afternoon, Agent Gray. My name is Mark Mahoney. Your
- 18 investigation of the bank robbery on October 20th led you
- 19 to the conclusion, among other things, that Michael Yoder,
- 20 who is my client, was one of the people that robbed that
- 21 bank, did it not?
- 22 A. Yes.
- 23 Q. There was no doubt about that in your mind, as far as the
- 24 information you had? That is what your conclusion was,
- 25 you didn't have any doubt about it, did you?

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- 1 A. Well, we take a little different point of view than that.
2 We try to remain neutral throughout an investigation and
3 try to seek out the facts the best we can, and then let
4 the chips fall where they will.
- 5 Q. And the chips fell in the direction that you felt that
6 Michael Yoder had been one of the participants?
- 7 A. Yes.
- 8 Q. So that when he contacted you, or at least an individual
9 who identified himself as Michael Yoder, by telephone,
10 you were very much interested in talking with him, were
11 you not?
- 12 A. Yes.
- 13 Q. Do you recall when that telephone conversation was?
- 14 A. No.
- 15 Q. If he saw you on the 11th of November of last year, do you
16 recall how many days prior to that he would have contacted
17 you by telephone?
- 18 A. It may have been the night before or the night previous
19 to that, I can't remember.
- 20 Q. Do you recall or did you know at that time where he was
21 when he made the telephone call to you?
- 22 A. I don't believe so.
- 23 Q. All right. Do you know who knows where he was when he
24 called you?
- 25 A. No, maybe I have forgotten.

1 Q. Okay. Do you recall the substance of that telephone con-
2 versation?

3 A. Possibly that he wanted to surrender himself. I really
4 am hazy about the telephone call.

5 Q. There were three defendants, there was a telephone conver-
6 sation with one of the other ones also, as I recall, is
7 that right?

8 A. Yes.

9 Q. So this leads possibly to some confusion in your mind, but
10 is it possible, as far as you are concerned, that the
11 defendant Michael Yoder called you and indicated that he
12 had heard you were looking for him?

13 A. Yes, that is possible.

14 Q. And that you indicated yes, probably you would like to
15 see him, something of that nature probably took place?

16 MR. WAGNER: Your Honor, I am not objecting to the question.
17 I do object to the fact that Mr. Mahoney seems
18 to be asking two questions and Mr. Gray is
19 answering the last one, and the record must
20 be confusing.

21 THE COURT: All right.

22 BY MR. MAHONEY:

23 Q. At that time, as far as you were concerned, most likely
24 you would have told him that you were interested in talking
25 with him?

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1 A. Well, I would have advised him that I didn't have any
2 warrant for him and I couldn't arrest him, if he wanted
3 to talk to me, he could, he didn't have to.

4 Q. In any event, arrangements were made for him to come see
5 you?

6 A. I believe that is right.

7 Q. And November 11th was the date that he did come and see you?

8 A. Yes, I recall November 11, 1976 as being the date that he
9 came into the FBI Office in Buffalo.

10 Q. Now, did you make a log -- is it your practice to make a
11 log of telephone conversations, such as you make a log of
12 an interview?

13 A. Well, if I had gotten any information concerning the bank
14 robbery I would have.

15 Q. All right. But the mere fact of getting a telephone call
16 from him would not prompt you to make a notation of that
17 in your file?

18 A. I didn't learn anything -- I didn't learn anything about
19 the robbery so --

20 Q. All right.

21 THE COURT: Your answer is no?

22 THE WITNESS: No.

23 BY MR. FAHONEY:

24 Q. Your procedure on the interviews is set forth in the inter-
25 view log -- by the way, is there any procedure that determines

- 1 who prepares the interview log?
- 2 A. Anybody can prepare it.
- 3 Q. Of the agents, for example, in this situation, you inter-
- 4 viewed all three defendants, there was no other agent who
- 5 also was in on all three interviews, yet as to Mr. Buchanan,
- 6 Agent Heiner wrote the log, and in the case of Daniel Yoder
- 7 and Michael Yoder you wrote the interview log, is there any
- 8 way to determine who does that?
- 9 A. There is no set procedure on which person is going to do
- 10 it.
- 11 Q. Your practice is that you identify yourself to the individual?
- 12 A. Yes.
- 13 Q. And any other agent that is present?
- 14 A. Right.
- 15 Q. In this case you identified yourself and Agent Poerstal to
- 16 Mr. Yoder?
- 17 A. Yes.
- 18 Q. Then you described to them the purpose of the interview,
- 19 you no doubt described to them that you were investigating
- 20 the bank robbery?
- 21 A. Yes.
- 22 Q. At that time had you advised him, did you not, of your
- 23 conclusion about how the robbery occurred and who participated
- 24 in it?
- 25 A. Would you say that again?

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1 Q. At that time you advised him of your beliefs as to how the
2 bank robbery occurred and who participated in it?

3 A. No, I didn't say that at that point, no. The first step
4 would be identifying ourselves as special agents of the
5 FBI.

6 Q. You say that you did not say that to him. Didn't you tell
7 him that you felt he had participated in the bank robbery?

8 A. Not at that point.

9 Q. Okay. Did there come a time when you advised him of your
10 conclusions as a result of your investigation?

11 A. Well, we don't make conclusions.

12 THE COURT: Yes or no.

13 THE WITNESS: No.

14 BY MR. MAHONEY:

15 Q. Did you advise -- you advised him nevertheless that Brian
16 Buchanan had given a statement previously?

17 A. No, I don't believe I did.

18 Q. Is it possible that you did but you don't recall now?

19 A. I don't think I would do that. That is not the way that
20 I do business of that nature.

21 Q. But you do not at this time recall specifically that you
22 did not do that, do you?

23 A. No, I don't remember, but that is not what I do.

24 Q. Okay. Now, one of your purposes in interviewing in this
25 case was to get from Mr. Yoder evidence that might lead to

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- 1 his being charged for this bank robbery, was it not?
- 2 A. Well, yes, if he wants to confess to me about committing
3 a crime, I want to hear it.
- 4 Q. Fine. Now, then there came a time when you read the state-
5 ment of rights, the Interrogation Advice of Rights form to
6 Mr. Voder, is that right?
- 7 A. Yes, that would have been before I asked him any questions.
- 8 Q. Okay. And I believe you indicated that you read orally
9 the entire statement to him and then gave it to him for
10 him to read?
- 11 A. Yes. That is not a requirement, we don't have to do that,
12 but it is a practice that I always make.
- 13 Q. Fine. Speaking of requirements, you bring that to my
14 attention, I asked you earlier in the hallway whether or
15 not there are regulations in the special agents' manual
16 or otherwise, administrative regulations in the FBI, which
17 direct the manner in which interrogation of suspects is
18 to proceed?
- 19 A. Yes. We have different kinds of books, you know, that are
20 guidelines on how to conduct ourselves in the interviews
21 and arrest situations, searches and so forth, all our
22 different activities.
- 23 Q. So that the type of interview that is covered by these
24 three arrests and interviews -- these three interviews
25 alone, that type of situation might have guidelines for it

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1 to be found in your agents' manual, is that correct, or
2 some other guidelines --

3 A. Yes.

4 Q. -- by the Bureau. All right, you have a copy of those at
5 your office, do you not?

6 A. Yes.

7 Q. Now, after you read these statements or the Interrogation
8 and Advice of Rights form to Mr. Yoder, which for the
9 record is Government's Exhibit 7 for identification, in
10 that form there is mention of a right to remain silent and
11 a right to an attorney?

12 A. Yes.

13 Q. Following your reading to him and his reading to himself,
14 he raised the question of an attorney, did he not?

15 A. I believe he did, yes.

16 Q. And when I say "raised the question of an attorney," speci-
17 fically in your prior testimony you said he -- you used
18 the term asked about a lawyer with respect to the two
19 previous defendants as well, and when you said the defen-
20 dant or the suspect asked about a lawyer, you are indicating
21 that he has indicated to you that he would like to have
22 an attorney?

23 A. Well, yes, and how he goes about getting one, and so forth.

24 Q. Okay. No doubt that inquiry about an attorney was prompted
25 by the statement that you read to him that brought up the

1 question of an attorney?

2 A. I think so.

3 Q. Now, and then you had -- this was the second of these
4 defendants that you had interviewed, and it was some nine
5 days earlier or eight days, depending on how you count
6 the days, that you interviewed Brian Buchanan, and at that
7 time you had the conversation with Mr. Skretny, and so that
8 your advice to Mr. Yoder on the 11th of November was based
9 upon the same understanding that you had gotten as a result
10 of your conversation with Mr. Skretny, and was pretty much
11 the same that you gave Mr. Buchanan, was it not?

12 A. Yes.

13 Q. And I will show you Government's Exhibit 12(a) -- before I
14 show you that, do you recall the period of time between
15 Mr. Yoder's reading of the statement of his rights to
16 himself and your reading it to him, and the time in which
17 he signed it, do you recall how much time that took?

18 A. No.

19 Q. By the way, these interview logs that are prepared, they
20 are prepared subsequent to the interview, are they not?
21 They are compilations of notes made during the interview?

22 A. Yes.

23 Q. So that during the interview you are not writing the inter-
24 view log, but you wait until after you've got your notes
25 and your witnesses, I suppose, and put down the appropriate

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1 times with each entry?

2 A. Well, that doesn't have to be that way. An interview log
3 can be maintained when an interview is taking place.

4 Q. Could that possibly have been done -- I will show to you
5 Government's Exhibit 6, which is the interview log from
6 November 11th regarding Michael Yoder --

7 A. I don't remember.

8 Q. Okay. Now, do you recall how much time on that day it took
9 for you to read the form to Mr. Yoder, for him to read the
10 form, until the time he actually signed it or the interview
11 began?

12 A. No.

13 Q. I will show you the interview log, how much time does that
14 show between the beginning of you reading the Interrogation
15 Advice of Rights form and the beginning of the interview?

16 A. Well, I read the form at 1:02 P.M. -- no, that's when I
17 advised Mr. Yoder of the purpose of the interview --
18 1:03 P.M. I read him the form, and 1:07 P.M. the interview
19 began.

20 Q. All right. So that is about four to five minutes, depending
21 upon how you note the minutes, for this discussion about
22 the lawyer to take place and for the form to be read?

23 A. Wait a minute, what was that again?

24 Q. Between 1:02 and 1:07 P.M. provides for about four minutes,
25 in which you advised Mr. Yoder of the rights from the form

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- 1 and for that discussion about the attorney to have taken
2 place, that is about the period of time in which they would
3 have taken place?
- 4 A. I didn't say that the discussion concerning the attorney
5 took place right at that point in the interview.
- 6 Q. Do you recall specifically when that did occur?
- 7 A. No.
- 8 Q. Okay. In any event, after advising Mr. Yoder of the means
9 and the time in which he could get an attorney, what did
10 he do, if anything, with respect to the form?
- 11 A. I believe he signed it, but I can't remember for sure. I
12 remember he said --
- 13 Q. Excuse me, I will show you the form. I will show you what
14 has been marked Government's Exhibit 7 for identification,
15 you have identified that as the Advice of Rights form for
16 Michael Yoder, November 11, 1976, and does that refresh
17 your recollection as to what he did, if anything, with
18 respect to that form following this discussion about how
19 he would obtain counsel?
- 20 A. Well, all this form reminds me of is that I read the form
21 to him, of the place and the date and the time that he
22 signed it, that he told me that he understood it, because
23 I don't have them sign it unless they understand the form,
24 and that I have witnessed it, and that another agent, John
25 Beershtal, witnessed the time when he completed that.

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- 1 Q. Okay. Which is 1:07 P.M.?
- 2 A. Right.
- 3 Q. So that indicates he understood it to the extent of that --
- 4 that indicates that he understood it, would have understood
- 5 it in light of the advice you had given him, about the way
- 6 to obtain an attorney, is that right?
- 7 A. Not if he didn't ask those questions at that time.
- 8 Q. Do you have any reason to believe at this time that the
- 9 questions he asked about an attorney did not follow the
- 10 Advice of Rights being read to him?
- 11 A. I think that -- my memory --
- 12 Q. If you can answer the question yes or no, please do that?
- 13 A. I can't remember.
- 14 Q. The question was do you know of any reason, I would like
- 15 it if you would answer that?
- 16 A. No.
- 17 Q. The method of the interview -- the interview would have
- 18 proceeded after the signing of the form, correct?
- 19 A. Yes, that is right.
- 20 Q. And --
- 21 A. Wait a minute, let me interrupt just a moment.
- 22 Q. No. After the interview progressed, you would gather in-
- 23 formation from Mr. Yoder, and then the stenographer would
- 24 be called in and you would dictate a statement to the
- 25 stenographer, isn't that right?

- 1 A. Yes, that is the way it would have happened.
- 2 Q. And the stenographer would prepare a typewritten document
- 3 which would be brought in for corrections, is that right?
- 4 A. Yes.
- 5 Q. Then you would go over with Mr. Yoder the statement, and
- 6 possibly another agent if he was present, and make
- 7 corrections if they were necessary?
- 8 A. Yes, sir.
- 9 Q. And this was in fact done with Mr. Yoder?
- 10 A. Yes, sir.
- 11 Q. And you had him initial those corrections, is that right?
- 12 A. Yes.
- 13 Q. Among other things, that also demonstrates that he has read
- 14 the whole statement later on, doesn't it?
- 15 A. Yes.
- 16 Q. Now, during the interview with Mr. Yoder, did there come a
- 17 time when you left for a phone call?
- 18 A. I don't remember right now.
- 19 Q. All right. Showing you Government's Exhibit 6, I ask you
- 20 if that refreshes your recollection about that event at
- 21 1:06 -- 1:19 P.M.?
- 22 A. That is right. 1:19 P.M. I did leave and make a telephone
- 23 call.
- 24 Q. And you returned at?
- 25 A. 1:25 P.M.

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- 1 Q. Did that telephone call relate to this investigation in
2 any way -- strike that. Let me ask you this, was that a
3 telephone call you made or you received, do you recall?
4 A. I can't remember.
5 Q. As far as you know, your present recollection is that it
6 does not relate to this investigation or that defendant?
7 A. I don't remember the telephone call.
8 Q. Okay. Do you recall if Mr. Buchanan was at the FBI Office
9 at the same time that Mr. Yoder was?
10 A. Was that November 11th?
11 Q. Yes.
12 A. I think he was the only one of the three defendants there
13 at that time, if I remember right.
14 Q. Okay. One of the -- we are talking about -- as far as
15 Michael Yoder goes, there were two statements which Michael
16 Yoder signed on that day, is that right?
17 A. Yes. I recall there were two statements, right.
18 Q. Okay. And were the statements signed in your presence?
19 A. Yes.
20 Q. One was handwritten, one was typewritten?
21 A. That is right.
22 Q. The next time that you -- by the way, after Mr. Yoder left,
23 after he signed the statement, at that time you did not
24 arrest him or file a complaint or --
25 A. No, he wasn't arrested until November 18th.

1 Q. All right. There is no question about the fact that you
2 could have arrested him and filed a complaint against him
3 at that time, is that correct?

4 A. Yes, I could, but that isn't our normal procedure.

5 Q. Well, it wouldn't have been -- it wasn't your procedure in
6 this case, because your normal procedure is to determine
7 the facts in each individual case, is it not?

8 MR. WAGNER: I object, your Honor. One question at a
9 time. I don't object to the questions them-
10 selves.

11 BY MR. DONOHUE:

12 Q. We will come back to that. The next time you saw Mr. Yoder
13 was on the 13th of November, isn't that correct?

14 A. I believe that is right.

15 Q. At that time you saw him because he appeared voluntarily
16 at your office, and he was arrested at that time?

17 A. Yes.

18 Q. And at that time you again had him sign a waiver of his
19 rights, did you not?

20 A. I was not there when he first came in the office, and I
21 did not place him under arrest, I did not read him his
22 rights, another agent took care of that.

23 Q. All right. And on the 13th of November, that is the date
24 on which the location of the money was discussed with Mr.
25 Yoder, was it not?

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1 A. Yes.

2 Q. All right. Although you didn't appear with -- you didn't
3 talk with him initially, you were the one who prepared the
4 interview log for that date, Exhibit 12(a), is that right?

5 A. I prepared the first page and the first two words of the
6 second page.

7 Q. The first two words being "Orville Smith"?

8 A. Orville Smith.

9 Q. Orville Smith is a State Police agent?

10 A. An investigator for the State Police.

11 Q. And your interest in continuing to talk with Mr. Yoder at
12 that time was based upon the information -- in part, in
13 any event -- on the information he had given you on the
14 previous interview, was it not?

15 A. Yes.

16 Q. That confirmed your suspicion that he was involved in the
17 crime?

18 A. No.

19 Q. His statement to you --

20 A. I can't really answer that question.

21 Q. All right. That is because you don't -- you are not in
22 the business of drawing conclusions, you are gathering
23 information?

24 A. That is true.

25 Q. In any event, on the 18th day of November Mr. Yoder was

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1 advised of his rights, as far as you know, although you
2 were not present, that is based on the report that you
3 prepared?

4 A. Yes, Special Agent Langer told me that he had advised Mr.
5 Michael Yoder of his rights prior to when I talked to
6 Michael Yoder on November 18th. Also Michael Yoder told
7 me he had been advised of his rights and, in fact, he
8 signed an Advice of Rights form on that day.

9 Q. Which is already marked as Government's Exhibit 12(b),
10 is that right?

11 A. As I recall, there is an Advice of Rights form that Mr.
12 Langer read to him and, as I recall, I think Mr. Yoder
13 signed it.

14 Q. Showing you what has been marked Government's Exhibit 12(b),
15 and that is an Advice of Rights waiver form signed by
16 Michael Yoder on the 18th of November, 1976?

17 A. Yes.

18 Q. Is that right?

19 A. Yes. I assume this is true, but I can't testify as to
20 this because I didn't witness his signature.

21 Q. Okay. That was Agent Langer who would be responsible for
22 that?

23 A. Yes, and also Agent Patrick.

24 THE COURT: You said that Michael Yoder did say to you that
25 he had received the advice of rights?

Direct and cross-examination of BI Agent Gray
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1 THE WITNESS: Yes.

2 BY MR. MAHONEY:

3 Q. Do I understand that each time a suspect is interrogated
4 or asked questions or asked to do something for you, and
5 they are separate occurrences, each time you will give him
6 his rights, is that right?

7 A. The purpose --

8 THE COURT: Are you asking whether this is the normal
9 pattern?

10 BY MR. MAHONEY:

11 Q. First, is that your pattern, is it your understanding --
12 these are several questions -- is it your normal course
13 to, if there are two sessions of interviews with an indi-
14 vidual, in the morning and afternoon, each session to
15 advise that individual of his rights and have him sign a
16 waiver?

17 A. Not necessarily. What I might do in the afternoon session
18 would be to say, 'Remember the rights form that I read to
19 you and you signed, that still applies now, do you have any
20 questions about it, do you want to see it again?' I wouldn't
21 necessarily -- my purpose there is to make sure they under-
22 stand.

23 THE COURT: Wait for another question. There is a possibility
24 we might move ahead more quickly.

25 MR. MAHONEY: Would you mark this as a Government's Exhibit?

(Thereupon document referred to was marked
Government's Exhibit 16 for identification.)

BY MR. MARONEY:

Q. Showing you what has been marked Government's Exhibit 16,
which is a -- well, you describe what that is, would you?

A. Well, it is an interview report, an FD-302, it concerns
the interview of Michael Roman Yoder by Special Agent Neil
D. Hainer, III, and State Police Investigators Freeman
Shaw and Orville Smith, on November 18, 1976.

Q. Okay. What I want to ask you is very particular, Govern-
ment's Exhibit 12(a), which is the interview log from
that day and the interview report both refer to an Advice
of Rights form. At the top of Government's Exhibit 16
it says that after being advised of his rights as contained
in the Interrogation Advice of Rights form certain things
occurred, and also Government's Exhibit 12(a) makes
reference to an Advice of Rights form. We have present
here Government's Exhibit 12(b), which is an Advice of
Rights form, do you have any reason to believe that the
Advice of Rights form mentioned in Government's Exhibit 16
and Government's Exhibit 12(a) are anything other than
Government's Exhibit 12(b), the Advice of Rights form which
is before you?

A. I can't answer that, I didn't prepare this.

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1 Q. The question is do you have any reason to believe that
2 they do not refer to the same form, that is, Government's
3 Exhibit 12(b)?

4 A. No.

5 Q. All right. Do you have any reason to believe on that day,
6 that is, November 18, 1976, when Mr. Yoder did sign that
7 form, that he had any different understanding of the facts
8 or the log regarding his right to or ability to obtain an
9 attorney than he did on the date you interrogated him on
10 the 11th of November?

11 A. Are you asking me to tell you what he was thinking?

12 MR. MAHONEY: Would you repeat the question?

13
14 (Thereupon the last question was read by
15 reporter.)
16

17 THE WITNESS: I guess not.

18 BY MR. MAHONEY:

19 Q. Now, in this case the defendants were all charged by way
20 of indictment, and that indictment was returned on the 17th
21 of November, is that correct?

22 A. Yes, sir.

23 Q. And it would have been possible for you to have -- you had
24 interviewed -- prior to the 17th you had interviewed two
25 of the defendants, and certainly both of them had made

1 statements tending to inculcate them in these crimes, had
2 they not, both Michael Yoder and Brian Buchanan?

3 A. That is right.

4 Q. You did not arrest them at that time, although you could
5 have, it was possible for you to have filed a complaint
6 against them and arrested them at the time they made their
7 statements?

8 A. I would have been empowered to arrest them at that time.

9 Q. And in spite of the fact they all for a period time, to
10 your knowledge, had left the jurisdiction following this
11 bank robbery, that is your understanding, is it not?

12 A. I understand they left this venue after the bank robbery.

13 THE COURT: Left what?

14 THE WITNESS: They left the Federal District of New York
15 after the bank robbery, is that what you mean?

16 BY MR. MAHONEY:

17 Q. Yes. Nevertheless, at that time you had no fear that they
18 were going to go anywhere, is that right, that they were
19 going to leave the jurisdiction again?

20 A. I did not feel after I interviewed them that they were
21 going to be running.

22 Q. They had been -- you obtained a lot of information from
23 them in your interviews, had you not --

24 A. Yes.

25 Q. -- that was very useful to you?

Direct and cross-examination of FBI Agent Gray
at Suppression Hearing.

1 A. Yes.

2 Q. You had hope of recovering the money from them?

3 A. Yes.

4 Q. And also of getting more information from them because
5 you hadn't talked yet to Daniel Yoder?

6 A. I hoped that Daniel Yoder would give me information con-
7 cerning the bank robbery, yes.

8 Q. Okay. You were finding, you were learning in this case
9 anyway that your procedure of not arresting these indivi-
10 duals as soon as you had enough information to arrest
11 them was proving beneficial to your investigation, is that
12 right?

13 A. That is not the reason I didn't arrest them.

14 Q. Well, let me ask you this, it did prove beneficial to your
15 investigation, did it not?

16 A. I don't think I can answer that question. You are asking
17 me to determine what was in their minds.

18 Q. No, I am not. What was the reason you didn't arrest Brian
19 Buchanan on the date of his statement to you?

20 A. Because I didn't have a Magistrate's warrant, I didn't
21 have a bench warrant.

22 Q. Is there any reason why you couldn't have arrested him and
23 filed a complaint against him?

24 MP. WAGNER: I object, your Honor. I can't see the relevance
25 as to whether or not --

- 1 THE COURT: I can see what he is driving at. I will let
2 him go further, overruled.
- 3 THE WITNESS: I did not fail to arrest him because I hoped
4 by not arresting him I would get a confession
5 out of him, is that what you mean?
- 6 THE COURT: Are you asking a question yourself?
- 7 BY MR. MAHONEY:
- 8 Q. The question is why did you not at that time arrest Brian
9 Buchanan when he made his statement to you?
- 10 MR. WAGNER: I think the witness answered that question,
11 your Honor.
- 12 THE WITNESS: I normally don't do it.
- 13 BY MR. MAHONEY:
- 14 Q. There certainly might be an occasion when you would arrest
15 somebody when they made a confession to you of a federal
16 crime?
- 17 MR. WAGNER: I object. That is a question calling for a
18 yes answer, in every case it is a truism.
- 19 MR. MAHONEY: Let's have the answer.
- 20 MR. WAGNER: I don't think the witness can answer a question
21 like that, it has no pertinence to this hearing.
- 22 THE COURT: Answer it and get it over with, Mr. Gray. Do
23 you understand it?
- 24 THE WITNESS: There could be some -- yes, your Honor -- there
25 could be --

Direct and cross-examination of FBI Agent Gray
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1 THE COURT: There are times when you do?

2 THE WITNESS: Yes.

3 THE COURT: That is the answer.

4 MR. MAHONEY: Your Honor, at this time I have one request
5 of this witness. First of all, I don't know
6 whether or not this is going to continue --

7 THE COURT: Until six o'clock.

8 MR. MAHONEY: But Agent Gray has advised that there are
9 FBI regulations covering the method of
10 interrogation of such suspects, and I would
11 request at this time that if there is another
12 date for the continuation of this hearing or
13 even if there isn't --

14 THE COURT: I don't see any foundation for it. I will
15 listen to you later concerning it. I don't
16 think you have laid any foundation for the
17 requirement at this point.

18 MR. MAHONEY: I wonder if he could provide Mr. Wagner with
19 a copy of those regulations?

20 THE COURT: If Mr. Wagner wants them, he can ask.

21 MR. MAHONEY: I would like to, as long as the agent is here,
22 I would like to make application at this time
23 or advise the Court that I wish to make
24 application for discovery --

25 THE COURT: I will listen to you in due course on it. I

1 want to get this over. Is there any redirect?

2 MR. WAGNER: Your Honor, just one question.

3 THE COURT: I'll bet.

4

5 REDIRECT EXAMINATION BY MR. WAGNER:

6 Q. Earlier when Mr. Mahoney was questioning you, he was asking
7 you questions, sir, about your recollection of when during
8 the conversation with Mr. Yoder the subject of an attorney
9 was raised, and if you can recall, sir --

10 THE COURT: Yoder, which Yoder?

11 BY MR. WAGNER:

12 Q. Michael Yoder, and as you recall, sir, you started to
13 interrupt Mr. Mahoney, and he told you he did not want
14 you to at that time, do you recall that?

15 A. I recall that but --

16 Q. Do you recall what it was that you wanted to bring to the
17 Court's attention at that time, sir?

18 A. Well, I believe that he asked the questions concerning an
19 attorney --

20 MR. MAHONEY: Objection, that is not responsive to the
21 question.

22 THE COURT: Overruled.

23 THE WITNESS: I believe that he asked the questions concerning
24 the attorney before he signed it, but he then
25 said that he would answer questions without an

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1 attorney present.

2 MR. WAGNER: I have nothing else. Thank you.

3 THE COURT: Would you like to follow up on that?

4 MR. MAHONEY: Yes, your Honor, I would.

5
6 RECROSS EXAMINATION BY MR. MAHONEY:

7 Q. Agent Gray, that was subsequent to your advising him of
8 the status of things, regarding how to obtain an attorney,
9 that you had learned from Mr. Skretny, is that right, as
10 best you recall?

11 A. I think so.

12 MR. MAHONEY: All right.

13
14 RECROSS EXAMINATION BY MR. WARRINGTON:

15 Q. Mr. Gray, you testified that after Daniel Yoder was
16 arraigned and he went with you out to assist you in
17 looking for the money, you did not advise him of his
18 rights again after the arraignment, is that correct?

19 A. Yes.

20
21 (Government's Exhibit 17 was marked for
22 identification.)

23
24 BY MR. WARRINGTON:

25 Q. I show you Government's Exhibit 17, and ask you if you

1 if you will look at that document and tell me if you can
2 identify it?

3 THE COURT: Government's Exhibit 17? You have just marked
4 that?

5 MR. HARRINGTON: Government's Exhibit 17.

6 BY MR. HARRINGTON:

7 Q. Would you look at that document and tell us if you can
8 identify it?

9 THE COURT: What is it?

10 THE WITNESS: It is an interview report form, FD-302, con-
11 cerning my interview of Daniel Yoder on
12 November 18, 1976.

13 BY MR. HARRINGTON:

14 Q. That is a report that you prepared, is that right?

15 A. Yes.

16 Q. Sir, doesn't it state in this report, in the first sentence,
17 "That after being advised of his rights, as contained in
18 the form entitled Interrogation Advice of Rights, Daniel
19 Murray Yoder assisted Special Agent Thomas Alva Gray, Jr.
20 and Investigator Dave Davis, Wyoming County Sheriff's
21 Office, Warsaw, New York, in locating a package of money.
22 The currency was all in bills underneath loose grain on
23 the south side of the outside of Brush Cardena Bar (Ranch
24 House Bar), Route 15, Chaffee, New York."?

25 A. Yes.

Direct and cross-examination of FBI Agent Gray
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1 Q. That is not true, is that right, you did not advise him
2 of his rights on that occasion?

3 A. Well, this I believe refers to the advise of rights that
4 I gave him that same day, yes. I don't think there is a
5 separate Advice of Rights form other than the one when I
6 first started interviewing him back in our office.

7 Q. You stated here after advising him of his rights you went
8 out to Warsaw, is that correct, that is what the form says?

9 A. Yes, I advised him of his rights, and after advising him
10 of his rights, we went to recover the money.

11 Q. But you testified earlier that you did not advise him of
12 his rights again after the arraignment, is that right?

13 A. I don't understand the question.

14 Q. Well, you testified earlier that you did not advise him of
15 his rights again after the arraignment and before you
16 went out to get the money, isn't that right?

17 A. That is right.

18 Q. This statement says something to the contrary, doesn't it?

19 A. No.

20 MR. HARRINGTON: No further questions.

21 THE COURT: Is that all, gentlemen?

22 MR. WAGNER: I have nothing else.

23
24 (Witness excused.)
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**Direct and cross-examination of FBI Agent Langer
at Suppression Hearing.**

Direct and cross-examination of FBI Agent Langer
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Direct and cross-examination of FBI Agent Langer
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1 T H O M A S L A N G E R, 7009 Waring Circle, Derby, New
2 York, called as a witness on behalf of the Government, and being
3 first duly sworn, testified as follows:

4
5 DIRECT EXAMINATION BY MR. WAGNER:

6 Q. Mr. Langer, I would like you to tell the Judge your
7 occupation?

8 A. Special agent with the Federal Bureau of Investigation.

9 Q. Approximately, sir, how long have you had such position?

10 A. Approximately three and a half years.

11 Q. You are assigned to the Buffalo Office at this time?

12 A. Yes, sir, I am.

13 Q. Can you describe briefly what your duties are with the
14 FBI?

15 A. I am currently assigned to the Bank Robbery Squad and the
16 Fugitive Squad.

17 Q. In connection, sir, with your duties as an FBI agent, did
18 you have occasion to become involved in any way in the
19 investigation of suspects who were suspected of robbing
20 the Wyoming County Bank, and I am specifically referring
21 to Mr. Daniel Yoder and Mr. Michael Yoder?

22 A. Yes, sir.

23 Q. I would like you to tell the Court, as best you recall,
24 when it was that you first got involved with either of the
25 two individuals, and explain what happened after that, please.

1 A. This was on November 18, 1976.

2 Q. Did you see both of them on that day?

3 A. Yes, sir, and my involvement was that I assisted Special
4 Agent Gray of our office in the apprehension of Daniel
5 Yoder, as well as the transporting of him to our office
6 in Buffalo, and I assisted with the fingerprinting and
7 photographing of him.

8 Q. Mr. Langer, sir, will you tell us about what time of day
9 it was, if you recall, approximately, that you first met
10 Daniel Yoder, and where that was?

11 A. Approximately 12:20 P.M. at a residence in Sardinia, New
12 York.

13 Q. Can you tell us who was with you at that time?

14 A. At the time of the arrest it was myself and Special Agent
15 Gray, and after he was placed under arrest I and another
16 special agent by the name of Charles Patrick brought Mr.
17 Yoder downstairs and put him into our Bureau vehicle.

18 Q. Now, when you put him into the vehicle who was with you,
19 in addition to the people you just mentioned?

20 A. Special Agent Neil Heiner was waiting for us in the
21 vehicle.

22 Q. In the vehicle was you --

23 A. Special Agent Heiner, myself, Special Agent Patrick, and
24 at a later time Special Agent Gray came down and joined us.

25 Q. When you were in the car with Daniel Yoder, sir, did you

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- 1 have any conversation with him?
- 2 A. Yes, sir, I did.
- 3 Q. Had you had any conversation with him prior to that?
- 4 A. I don't recall that I had any conversation while we were
- 5 in the apartment, no.
- 6 Q. About how long was it, sir, from your appearance in the
- 7 apartment to when you were in the car with him?
- 8 A. Approximately ten, fifteen minutes.
- 9 Q. I would like you to tell us, as best you recall, what it
- 10 was that you said to Daniel Yoder in the car and what he
- 11 said to you, sir?
- 12 A. When we got in the vehicle I immediately advised him of
- 13 his rights, as set forth in the Interrogation Advice of
- 14 Rights form.
- 15 Q. Did you use a particular form at that time?
- 16 A. Yes.
- 17 Q. Can you explain how you went about using that form?
- 18 A. What I did is I read to him first of all, and I asked him
- 19 if he had any questions, and he said no, and then I gave
- 20 him the form for him to read, which he in turn did.
- 21 Q. Showing you, Mr. Langer, what has been marked Government's
- 22 Exhibit 11 for identification, I ask you to look at that
- 23 and tell us what that is, if you know?
- 24 A. Yes, sir, Government's Exhibit 11 is the form I just
- 25 referred to.

- 1 Q. Now, can you tell us, sir, what happened after you gave
2 the form to Mr. Yoder?
- 3 A. Mr. Yoder, like I mentioned, read the form and I asked him
4 if he understood it, and he said yes. I said, "Do you
5 understand it?" He said yes, and I asked him at that
6 time whether he would like to execute the waiver of rights
7 on the form.
- 8 Q. Did you ask him in that language or in a different language?
- 9 A. No, sir, to the best of my knowledge that was what I asked
10 him, at which time he declined to sign the form.
- 11 Q. Did he say anything else to you at that time, did you
12 say anything else to him, if you recall?
- 13 A. No, sir, I did not, to my knowledge.
- 14 Q. Do you know if there were conversations between him and
15 any other people in the car and Daniel Yoder at that time?
- 16 A. Yes, sir, Special Agent Gray, who like I mentioned earlier,
17 and who accompanied us in the car, that was right after I
18 advised Mr. Yoder of his rights, asked Mr. Yoder whether
19 he had been advised of his rights, and he responded yes.
20 Then I believe he also asked whether or not he would like
21 to make a statement.
- 22 Q. Mr. Gray asked that of Daniel Yoder?
- 23 A. Yes. I believe also that I had asked.
- 24 THE COURT: Do you remember or are you speculating?
- 25 THE WITNESS: I remember that I heard Mr. Gray ask whether

Direct and cross-examination of FBI Agent Langer
at Suppression Hearing.

1 he wanted to make a statement, and I also
2 remember that I had asked him that at that
3 time.

4 BY MR. WAGNER:

5 Q. Do you recall what response Mr. Daniel Yoder gave, if any?

6 A. Yes, he responded that he would rather not give a state-
7 ment.

8 Q. To both of those questions?

9 A. Yes, sir.

10 Q. Did you attempt any further questioning of Daniel Yoder
11 at that time in the car, sir?

12 A. No, sir.

13 Q. Did you have any further conversation with Mr. Daniel
14 Yoder at that time?

15 A. Not at that time, no, sir.

16 Q. Now, did there come a time that you left in the car with
17 Daniel Yoder?

18 A. Yes.

19 Q. About how long was that after you first got into the car?

20 A. I'm sorry, if we left the area in the vehicle?

21 Q. Right.

22 A. Yes, sir, we did, and I believe it was approximately twenty
23 or twenty-five minutes after the time of arrest.

24 Q. Who was it that left with you and Daniel Yoder?

25 A. Special Agent Patrick.

Direct and cross-examination of FBI Agent Langer
at Suppression Hearing.

- 1 Q. What about Mr. Gray and Mr. Heiner?
- 2 A. They remained at the residence, that is all I know.
- 3 Q. What did you do, you and Special Agent Patrick and Mr.
- 4 Daniel Yoder?
- 5 A. We then went back to our office here in Buffalo via the
- 6 Bureau car.
- 7 Q. What did you do when you got back?
- 8 A. The first thing we did is -- I think -- I believe that we
- 9 again searched him.
- 10 THE COURT: Do you remember?
- 11 THE WITNESS: I'm not certain of that, your Honor.
- 12 THE COURT: Don't speculate.
- 13 THE WITNESS: We commenced to fingerprint him and photograph
- 14 him at that time.
- 15 BY MR. WAGNER:
- 16 Q. Do you recall, Mr. Langer, if you had any further conversa-
- 17 tion with Daniel Yoder back at the FBI Office?
- 18 A. Yes, sir, I asked him for descriptive information concerning
- 19 himself.
- 20 Q. Did he provide that to you?
- 21 A. Yes, he did.
- 22 Q. That would have been height, weight, background information?
- 23 A. Yes.
- 24 Q. Did you have any further conversation with him about any-
- 25 thing else, if you recall?

Direct and cross-examination of FBI Agent Langer
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- 1 A. No, sir.
- 2 Q. Mr. Langer, do you know, sir, if a log was kept of the
3 events concerning the times and events that occurred with
4 respect to Daniel Yoder?
- 5 A. Yes.
- 6 Q. Do you know who kept that log, sir?
- 7 A. Special Agent Gray.
- 8 Q. How did Special Agent Gray know what you had done, if you
9 know, sir?
- 10 A. What I did I kept -- when I was away from Agent Gray and
11 we were not involved in the same things, I kept my own
12 notes as to the time, as to the time that we did stuff
13 with Mr. Yoder.
- 14 Q. What did you do with those notes?
- 15 A. What I did, after I compared -- after I gave my notes to
16 Mr. Gray, he prepared the log for all of us, then I compared
17 my notes to the log for accuracy, at which time I was
18 satisfied that it was accurate, and I destroyed the notes.
- 19 Q. Do you know, by the way, if Mr. Gray prepared your notes,
20 in addition to anyone elses, with the final log he prepared?
- 21 A. I don't know.
- 22 Q. I show you what has been marked Government's Exhibit 10
23 for identification, and ask you if you recognize that,
24 please?
- 25 A. Yes, sir, this is the arrest and interview log -- I'm sorry --

Direct and cross-examination of FBI Agent Langer
at Suppression Hearing.

- 1 Government's Exhibit 10 is the arrest and interview log
2 that I just referred to.
- 3 Q. Mr. Langer, have you had occasion to see that before, sir?
- 4 A. Yes, sir.
- 5 Q. How do you know that is that log, did you prepare that?
- 6 A. No, sir, I did not.
- 7 Q. Do you know if that log is accurate with respect to the
8 events that you engaged in?
- 9 A. Yes, sir.
- 10 Q. How do you know that, sir?
- 11 A. Well, after Mr. Gray had prepared the log, like I mentioned
12 before, I compared it to the notes that I had, and every-
13 thing was accurate.
- 14 Q. Is there anything on that that can refresh your recollection
15 that you compared that particular log, Government's Exhibit
16 10, with your notes?
- 17 A. Yes, sir, after I was satisfied that it was accurate, I
18 placed my initials to the events in which I participated,
19 as well as at the completion of the log I affixed my
20 signature.
- 21 Q. Mr. Langer, picking up with the events of November 18,
22 1976, when you were with Mr. Yoder in the FBI Office, can
23 you tell us, sir, if you had any involvement with him that
24 day?
- 25 A. No, sir, I believe that was it.

Direct and cross-examination of FBI Agent Langer
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1 Q. Mr. Langer, on that same day did you also encounter a
2 fellow by the name of Michael Yoder?

3 A. Yes, I did.

4 Q. I would like you to tell the Court, as best you recall,
5 when it was that you first met Michael Yoder, and the
6 circumstances surrounding that meeting?

7 A. Yes, sir. We again were back in the office, Special Agent
8 Patrick and myself, and we were processing Daniel Yoder
9 when I got a telephone call from the receptionist. She
10 advised that there was a Michael Yoder at the front desk
11 and he was there to surrender himself.

12 Q. When you received that information from the receptionist
13 what did you do?

14 A. I immediately went out to the reception area and I advised
15 Mr. Yoder of my identity, and I placed him under arrest
16 at that time.

17 Q. That is Michael Yoder?

18 A. Yes.

19 Q. Did you have any conversation with Mr. Michael Yoder at
20 that time?

21 A. What happened, then I took Mr. Michael Yoder into an
22 interview room, at which time I advised him of his rights,
23 as set forth on the Interrogation and Advice of Rights
24 form.

25 Q. Can you recall, sir, what the procedure was with respect to

1 using that form?

2 A. Yes, sir. Like I did read it to him, at which time I
3 asked him if he understood it, and he said yes. I then
4 gave him the form to read for himself, and when he completed
5 reading it, I asked him if he understood everything, and
6 he said yes, and I asked him whether he would sign the
7 form, the waiver of rights, and he indicated yes, and he
8 did so.

9 Q. Showing you, sir, Government's Exhibit 12(b), for identi-
10 fication, I ask you to look at that and tell us what that
11 is?

12 A. Government's Exhibit 12(b) is the Interrogation Advice of
13 Rights form which I just referred to.

14 Q. Do you see certain signatures on that form?

15 A. Yes.

16 Q. One of them is Michael Yoder's?

17 A. Yes.

18 Q. Were you present when he signed that, sir?

19 A. Yes, I was.

20 Q. Do you know if Michael Yoder asked you any questions about
21 the form?

22 A. No, sir, he asked none.

23 Q. After you had advised Mr. Michael Yoder of the content of
24 the form and you saw him sign it, what happened after
25 that, please?

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1 A. Okay. Michael Yoder -- just after I had read him the
2 Advice of Rights form, Special Agent Gray came into the
3 office at that time, and he entered the interview room.

4 Q. Had you had any conversation with Mr. Michael Yoder at
5 all, sir, other than advising him of his rights?

6 A. I personally didn't, no.

7 Q. Didn't you ask Michael Yoder if he wanted to give a state-
8 ment to you, sir?

9 A. I didn't even get that far with him. Special Agent Gray
10 came in and assumed the interview since it was his case.

11 Q. Do you recall if Michael Yoder said anything to you at
12 that time about giving a statement to you or anyone else?

13 A. He indicated in my presence to -- Special Agent Gray asked
14 him whether he had been advised of his rights, and Michael
15 responded yes and, as I recall, Special Agent Gray asked
16 him whether he could ask him a few questions, the response
17 was yes at which time Agent Gray did.

18 Q. Did you have any further dealings with Michael Yoder at
19 that time or following that time?

20 A. No, sir.

21 Q. Did you have any further dealings with either of these
22 two gentlemen, Mr. Michael Yoder or Daniel Yoder, later
23 that afternoon?

24 A. My only dealing was I helped transport Mr. Michael Yoder
25 to the Magistrate's Office at a later time in the day.

1 Q. Do you know about when that was?

2 A. I would say approximately three thirty, four o'clock or
3 it may have been later, four thirty.

4 THE COURT: Is that Michael?

5 THE WITNESS: Yes, sir.

6 BY MR. WAGNER:

7 Q. Do you know, sir, whether or not any log was kept of the
8 events occurring which involved Michael Yoder?

9 A. Yes, sir.

10 Q. Do you know what the procedure was for keeping that log,
11 as far as your particular involvement was concerned?

12 A. Special Agent Gray prepared the entire log, and he did so
13 from my notes that I kept during the processing and the
14 arrest of Michael.

15 Q. Did you ever see the log that he prepared from your notes,
16 sir?

17 A. Yes, sir, I did.

18 Q. And did you have occasion to check it against your notes?

19 A. Yes, sir, I did.

20 Q. What did you conclude as far as its accuracy is concerned?

21 A. That it was in fact accurate to my notes.

22 Q. Showing you what has been marked Government's Exhibit 12(a)
23 for identification, I would like you to look at that and
24 tell us what that is, if you know?

25 A. Yes, sir. Government's Exhibit 12(a) is the arrest and

Direct and cross-examination of FBI Agent Langer
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1 interview of Michael Yoder that I just referred to.

2 Q. Is there anything about that form, sir, which refreshes
3 your recollection that you compared it with your notes?

4 A. Yes, sir, concerning the portions of the arrest and the
5 interview that I was involved in, after I compared it with
6 my notes and I found it to be accurate, I affixed my
7 initials during that entry.

8 Q. Other than bringing Mr. Michael Yoder to the Magistrate's
9 Office, did you have any further involvement that you can
10 recall at this time, with either Michael Yoder or Mr.
11 Daniel Yoder?

12 A. No, sir.

13 MR. WAGNER: I have nothing else. Thank you.

14
15 CROSS EXAMINATION BY MR. HARRINGTON:

16 Q. Agent Langer, I am going to direct my questions toward
17 Daniel Yoder and your recollection of events concerning
18 his arrest. First of all, on the 18th were you present
19 when he actually was arrested, sir, in his apartment?

20 A. Yes, sir.

21 Q. Okay. Do you recall whether he was handcuffed when he
22 was arrested?

23 A. After he was placed under arrest, yes, sir.

24 Q. Cuffed in front of him or behind him?

25 A. As I recall, behind him.

Direct and cross-examination of FBI Agent Langer
at Suppression Hearing.

- 1 Q. Did you do the cuffing?
- 2 A. I am certain it was behind him. I did it, I believe I
- 3 did the handcuffing, yes, sir.
- 4 Q. Were any questions asked of him at the time he was arrested?
- 5 A. Other than his identity -- we are talking about upstairs?
- 6 Q. In the apartment.
- 7 A. I recall his asking -- Special Agent Gray asked him his
- 8 identity, and he in turn responded Daniel Yoder.
- 9 Q. Was he advised of his rights in the apartment?
- 10 A. No, sir.
- 11 Q. How long were you in the apartment before he was taken out?
- 12 A. Approximately ten minutes.
- 13 Q. Then he was taken downstairs to the car that was waiting
- 14 outside, is that right?
- 15 A. Yes, sir.
- 16 Q. And in the car you testified was yourself, Agent Patrick,
- 17 Daniel Yoder and Officer Heiner?
- 18 A. Yes, sir, and Special Agent Gray joined us a little later.
- 19 Q. Before Special Agent Gray joined you, you indicated that
- 20 you were the one that read him his rights?
- 21 A. Yes.
- 22 Q. You read him the form?
- 23 A. Yes, sir.
- 24 Q. Out loud?
- 25 A. Yes, sir.

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1 Q. After you read it to him did you ask him if he understood
2 it?

3 A. Yes.

4 Q. And then you say you handed him the form to read, is that
5 right?

6 A. Yes.

7 Q. Was he still handcuffed at this time?

8 A. I would guess that he was.

9 Q. We are not asking you to guess, we are asking you to
10 remember.

11 A. He was handcuffed, yes. I don't believe that we took
12 the handcuffs off. I can't recall.

13 Q. Were his hands in front of him or behind him?

14 A. I —

15 THE COURT: You don't know?

16 THE WITNESS: I can't recall whether he was cuffed behind him
17 or in front of him.

18 BY MR. HARRINGTON:

19 Q. Where was he seated in the car?

20 A. In the back.

21 Q. Where were you seated?

22 A. In the back seat.

23 Q. You testified that he refused to sign the waiver, is that
24 right?

25 A. He declined to sign it, yes, sir.

- 1 Q. He refused to give you information at that time?
- 2 A. That is true.
- 3 Q. Then Officer Gray came and went through the questions con-
4 cerning the advise of rights, and again he refused to give
5 any information at that time?
- 6 A. Yes, sir.
- 7 Q. How long was Officer Gray in the car?
- 8 A. Approximately five minutes.
- 9 Q. How soon after that was it that you left the scene?
- 10 A. Approximately another five minutes.
- 11 Q. Was there any questioning or any conversation with Daniel
12 Yoder from the time that Agent Gray left until the car
13 departed from the scene?
- 14 A. Not that I recall.
- 15 Q. On the way downtown -- how long did it take you to get
16 downtown to FBI headquarters?
- 17 A. Approximately an hour and five minutes.
- 18 Q. Was there any conversation with Mr. Yoder in the car on
19 the way down?
- 20 A. There was conversation, yes, sir.
- 21 Q. What was asked of him?
- 22 A. It was small conversation, general, nothing pertaining to
23 his involvement in the bank robbery.
- 24 Q. Did anything unusual happen on the way downtown?
- 25 A. Not that I recall.

Direct and cross-examination of FBI Agent Langer
at Suppression Hearing.

- 1 Q. Weren't you stopped for speeding on the way down?
2 A. Not that I recall.
3 Q. Okay. Did you make any statement to Mr. Toder on the way
4 downtown from the scene to FBI headquarters concerning the
5 benefits to him if he gave a statement to you or to the
6 FBI?
7 A. No. He was very definite that he didn't want to talk to
8 me about it.
9 Q. Did he ask for an attorney? ✓
10 A. Not of me, no, sir.
11 Q. Did he ask for an attorney at any time that you were ✓
12 present with him on November 18th?
13 A. I don't recall that, no, sir.
14 Q. Did you make the comment to him, 'Did you think you could
15 get away with the bank robbery?'
16 A. Did he think he could get away with it?
17 Q. Did you make that comment to him?
18 A. No, sir.
19 Q. Did you ask him whose idea it was to rob the bank?
20 A. No. I asked no questions pertaining to the bank robbery.
21 Q. Did you ask him about a trip to Florida?
22 A. I didn't know he went to Florida.
23 Q. Did you ask him how many other people knew about the bank
24 robbery?
25 A. I asked him no questions pertaining to the bank robbery. ✓

Direct and cross-examination of FBI Agent Langer
at Suppression Hearing.

- 1 Q. Nothing whatsoever?
- 2 A. Not that I can recall at all.
- 3 Q. Did you make the statement to him that if Mr. Yoder had
- 4 an attorney, an attorney couldn't help him at that point?
- 5 A. We never discussed an attorney. I never discussed, you
- 6 know, whether he wanted an attorney or whether we would
- 7 get him an attorney.
- 8 Q. Did any of the other agents discuss any of the matters
- 9 pertaining to the robbery with Mr. Yoder while coming down-
- 10 town in the car?
- 11 A. I think Special Agent Gray asked him whether he wanted to
- 12 make a statement about the bank robbery, he responded no,
- 13 and other than that --
- 14 THE COURT: That wasn't while you were going downtown?
- 15 THE WITNESS: No.
- 16 BY MR. HARRINGTON:
- 17 Q. On the way downtown who was in the car with you?
- 18 A. Special Agent Patrick.
- 19 Q. There were two officers and Mr. Yoder?
- 20 A. Two agents and Mr. Yoder, yes, sir.
- 21 Q. Who was the other officer, Patrick?
- 22 A. Charles Patrick.
- 23 Q. Did he ask Mr. Yoder any questions on the way down?
- 24 A. Not that I recall.
- 25 Q. Nothing pertaining to the bank robbery, is that right?

Direct and cross-examination of FBI Agent Langer
at Suppression Hearing.

- 1 A. Yes, sir. To the best of my recollection, Mr. Patrick
2 didn't.
- 3 Q. At any time that you were with Mr. Yoder was there ever
4 any mention of an attorney made? This is Daniel Yoder on
5 November 18th.
- 6 A. Again, to the best of my recollection, I don't recall him ✓
7 asking us about the availability of an attorney, but our --
8 I'm sorry.
- 9 Q. Do you recall asking him who his attorney was?
- 10 A. No, sir, I do not. I would not have had a need to do that.
- 11 Q. When you got downtown how long were you with Daniel Yoder
12 at FBI headquarters after you transported him?
- 13 A. I would say approximately two, two and a half hours he was
14 in out office.
- 15 Q. How long were you --
- 16 A. Personally with him?
- 17 Q. -- actually with him yourself?
- 18 A. I would say perhaps forty-five minutes, an hour, approxi-
19 mately.
- 20 Q. All right. Were you present when his rights were read
21 again to him at FBI headquarters?
- 22 A. By Special Agent Gray?
- 23 Q. By anybody.
- 24 A. I really don't recall whether I was present when he was --
25 if he was read his rights again.

1 Q. Did you have any conversation with Mr. Yoder at FBI head-
2 quarters yourself?

3 A. As I mentioned, I asked him about his background, physical
4 description.

5 Q. Did he give you his background and physical description
6 right away when you asked him for it?

7 A. Yes, sir.

8 Q. Did he in any way indicate that he didn't want to give
9 you any information at all?

10 A. No.

11 Q. Did he ask for an attorney when you were at FBI headquarters?

12 A. No, sir.

13 Q. How long were you actually present with Daniel Yoder at
14 the same time that Thomas Gray was?

15 A. Very short. Very, very short, maybe a minute, maybe a
16 little longer.

17 Q. Did Mr. Yoder at any time make a request of you at FBI
18 headquarters for permission to use the telephone to call
19 his father?

20 A. Yes, sir, I believe he did.

21 Q. All right. When was that, sir?

22 A. As I recall, it was sometime after he had been fingerprinted
23 and photographed. I would guess maybe forty-five minutes
24 after we had gotten down to the office.

25 Q. Was this before Officer Gray read him his rights?

Direct and cross-examination of FBI Agent Langer
at Suppression Hearing.

1 A. I can't -- to tell the truth, I can't recall when, if at
2 all, Mr. Gray advised him of his rights.

3 Q. Was this before you were with Daniel Yodar and Thomas Gray
4 at FBI headquarters that he had asked for permission to
5 call his father?

6 A. Yes, sir.

7 Q. Did you allow him to call his father?

8 A. Yes, we did -- I did.

9 Q. Do you recall what time that was?

10 A. No, sir. I am unable to recall it.

11 Q. Did he in fact call his father?

12 A. Yes, sir.

13 Q. Were you present, sir?

14 A. Yes, sir.

15 Q. Did you make a notation of that?

16 A. I don't believe I did.

17 Q. Did you overhear the conversation that he had with his
18 father?

19 A. No, sir.

20 Q. Could you hear him speaking?

21 A. No, sir.

22 Q. After he finished the telephone conversation did he say
23 anything to you about the conversation he had with his
24 father?

25 A. I believe he made some type of statement, but I can't recall

Direct and cross-examination of FBI Agent Langer
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- 1 what it was.
- 2 Q. All right. Would it help to refresh your recollection if
- 3 I told you that he probably said his father told him not
- 4 to say anything until he talked to an attorney?
- 5 A. That could be, he may have said that.
- 6 Q. You can't recall one way or the other?
- 7 A. I can't recall. It was really of no interest to me because
- 8 he had decided that he preferred not to talk to me and
- 9 therefore I wasn't really interested.
- 10 Q. You were not interested in anything he had —
- 11 A. He told me he didn't want to talk to me about it.
- 12 Q. Showing you Government's Exhibit 10, which is the arrest
- 13 and interview log, could you point out to me which of
- 14 those initials are yours?
- 15 A. Okay. You want to know which initials are mine?
- 16 Q. Show me one set.
- 17 A. The middle one on the top.
- 18 MR. HARRINGTON: Thank you. I have no further questions.
- 19 THE COURT: Mr. Mahoney?
- 20
- 21 CROSS EXAMINATION BY MR. MAHONEY:
- 22 Q. Good afternoon, Agent Langer. I am Mark Mahoney. Govern-
- 23 ment's Exhibit 12(a) is an arrest and interview log from
- 24 11/19/76, and your signature appears at the bottom of it,
- 25 does it not?

Direct and cross-examination of FBI Agent Langer
at Suppression Hearing.

1 A. Yes, sir, it does.

2 Q. All right. Your signature on this exhibit is in blue ink,
3 your initials are in blue ink, is that right?

4 A. Yes, sir.

5 Q. All right. Does your handwriting appear anywhere else on
6 that document that you know of?

7 A. No, sir.

8 Q. Are you -- that document indicates that at 3:30 P.M. on
9 the 11th, on 11/13/76, Mr. Yoder was advised of his rights?

10 A. Yes, sir.

11 Q. Are you aware -- do you have any knowledge whether subse-
12 quent to that on that day he was again advised of his
13 rights?

14 A. I am unable to recall that, whether he was or wasn't. I
15 don't believe that he was by me.

16 MR. MAHONEY: Thank you.

17 THE COURT: Anything, Mr. Wagner?

18 MR. WAGNER: Nothing else, your Honor.

19 THE COURT: All right, thank you.

20
21 (Witness excused.)
22
23
24
25

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**Direct and cross-examination of FBI Agent Heiner
at Suppression Hearing.**

Direct and cross-examination of FBI Agent Heiner
at Suppression Hearing.

Direct and cross-examination of FBI Agent Heiner
at Suppression Hearing.

1 N E I L D A N I E L H E I N E R, 27 Meadow Run, Hamburg,
2 New York, called as a witness on behalf of the Government, and
3 being first duly sworn, testified as follows:
4

5 DIRECT EXAMINATION BY MR. WAGNER:

6 Q. Mr. Heiner, I would like you to tell the Judge what your
7 occupation is, please?

8 A. I'm a special agent with the Federal Bureau of Investigation.

9 Q. Approximately how long have you been with the FBI?

10 A. Since June of last year.

11 Q. You are assigned to the Buffalo Office?

12 A. I am.

13 Q. Can you describe generally what duties you are doing for
14 the FBI at this time?

15 A. Investigative duties for the 6th Squad, FBI. They handle
16 violations such as bank robberies, fugitive investigations,
17 kidnappings.

18 Q. Did you become involved with the investigation of suspects
19 on November 11, 1976, by the name of Michael Yoder or
20 Daniel Yoder?

21 A. I did.

22 Q. Did you in fact encounter both those individuals that day?

23 A. I don't recall the exact date, but I encountered both
24 Michael and Daniel Yoder.

25 Q. Was that the day those gentlemen were arrested, if you know,

Direct and cross-examination of FBI Agent Heiner
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- 1 sir?
- 2 A. I don't recall the exact date they were arrested.
- 3 Q. The day you encountered them was the day of there arrest
- 4 on bank robbery charges?
- 5 A. Yes, it was.
- 6 Q. I would like you to tell the Judge when it was that you
- 7 first became involved with your phase of the investigation
- 8 and what you did, sir?
- 9 A. I was present when Daniel Yoder was arrested. I was not
- 10 in the room, I was at that time outside the dwelling place,
- 11 it was an apartment, sort of a store.
- 12 Q. Where was that located?
- 13 A. I believe that was in Sardinia, New York.
- 14 Q. And do you know about what time of day that was, please?
- 15 A. I would say approximately a little after noon.
- 16 Q. I would like you to describe what you did at that time, sir?
- 17 A. I was assigned to watch the rear of that building in case
- 18 there would be any escape attempt, and I did that. After
- 19 that another agent, Agent Patrick, motioned to me to come
- 20 to the front of the building, which I did. I went upstairs,
- 21 at which time Agent Gray had Daniel Yoder in custody. Then
- 22 Daniel Yoder was removed to a Bureau car, and I remained
- 23 in the apartment for a short time after that and then I
- 24 proceeded down to the Bureau car.
- 25 Q. Can you tell us what you did when you got down to the car?

Direct and cross-examination of FBI Agent Heiner
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1 A. I got in the car, and in the car also were Agents Langer
2 and Patrick, and Agent Langer, I believe, advised Daniel
3 Yoder of his rights, and I believe he declined to sign
4 the form.

5 Q. Mr. Daniel Yoder did?

6 A. Yes.

7 Q. Can you tell us what you did after that, sir?

8 A. Just remained in the car with Agents Langer and Patrick,
9 and Yoder, and a little while later Agent Gray came down,
10 and he had a few words with Daniel Yoder, and asked him
11 if he had been advised of his rights. Mr. Yoder said he
12 had, and then Tom said -- well, he instructed Agent Langer
13 and Agent Patrick to take Mr. Yoder back to Buffalo, and
14 he instructed me to come along with him to continue the
15 investigation.

16 Q. With Mr. Gray?

17 A. Yes.

18 Q. You did that?

19 A. I did.

20 Q. Did there come a time that you and Agent Gray again appeared
21 at the FBI office in Buffalo?

22 A. We did.

23 Q. When you were there did you see either Mr. Daniel Yoder
24 or Mr. Michael Yoder?

25 A. Yes, later on that afternoon we saw both Daniel and Michael.

- 1 Q. And do you recall which one of the two individuals you saw
2 first back at the office?
- 3 A. No, I don't.
- 4 Q. Do you recall seeing Daniel Yoder?
- 5 A. Yes, I do, at the office.
- 6 Q. At the office?
- 7 A. Yes.
- 8 Q. You recall, sir, if you had any involvement with Daniel
9 Yoder at that time?
- 10 A. I believe I was present for an interview with Daniel Yoder
11 in which Tom Gray was interviewing him.
- 12 Q. Do you recall being present when Mr. Gray advised Mr. Yoder
13 of certain rights?
- 14 A. I don't recall exactly.
- 15 Q. Let me show you Government's Exhibit 12 for identification,
16 and I will ask you to look at that and tell us what that
17 is?
- 18 A. This is our standard Interrogation Advice of Rights form.
- 19 Q. Have you ever seen that particular one before?
- 20 A. I have.
- 21 Q. How do you know you have?
- 22 A. I signed it as a witness.
- 23 Q. When did you see it, if you recall?
- 24 A. I signed it as a witness on the 18th of November.
- 25 Q. Do you know who else signed it and witnessed it that day?

Direct and cross-examination of FBI Agent Heiner
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- 1 A. Thomas Alva Gray, Jr.
- 2 Q. Who else was there at that time, if you can tell us from
- 3 looking at the form, sir?
- 4 A. Daniel Murray Yoder.
- 5 Q. Do you recall now being there when Mr. Yoder was advised
- 6 of his rights, sir?
- 7 A. I do.
- 8 Q. Did you actually take part in the interview of Mr. Yoder
- 9 at that time, sir?
- 10 A. I did not ask him any specific questions but I was present.
- 11 Q. Who did the interview of him, if you recall?
- 12 A. Agent Tom Gray.
- 13 Q. Did you, yourself, have any involvement in asking questions
- 14 of Mr. Daniel Yoder at that time, sir?
- 15 A. No, I didn't.
- 16 Q. Did you have any questions that you asked Mr. Daniel Yoder
- 17 at any time the rest of that day that you recall?
- 18 A. I can't recall any specific questions.
- 19 Q. How about Michael Yoder, did you encounter him again that
- 20 day?
- 21 A. I did.
- 22 Q. Can you tell us where that was and when that was?
- 23 A. Michael Yoder appeared before the United States Magistrate
- 24 for his initial appearance, after which he in the company
- 25 of -- I'm not sure how he was transported between the

1 Federal Court House and the FBI Building, but he was -- at
2 which time I got in the car with Michael Yoder, myself and
3 two State Police special investigators, and Michael Yoder
4 was going to take us down to show us where he had his
5 portion of the bank robbery money hidden.

6 Q. So the record is clear, this appearance before the Magis-
7 trate occurred after you had been with Mr. Gray and Mr.
8 Daniel Yoder?

9 A. Yes.

10 Q. Do you know about what time of day it was that you appeared
11 at the Magistrate's Office?

12 A. It was in the late afternoon, I would have to --

13 Q. You don't have a recollection?

14 A. Not of the exact time, no.

15 Q. When you were at the Magistrate's Office, had you gone over
16 there with Mr. Yoder or someone else or by yourself?

17 A. I went over with Daniel Yoder.

18 Q. Did you have any conversation with Mr. Daniel Yoder on
19 the way over?

20 A. I don't recall any specific conversations.

21 Q. Certainly no conversation about this bank robbery that he
22 had been alleged to have committed, is that correct?

23 A. I don't recall.

24 Q. Now, when you were at the Magistrate's Office, when was it
25 there that you first again encountered Mr. Michael Yoder,

Direct and cross-examination of FBI Agent Heiner
at Suppression Hearing.

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1 other than just seeing him there?

2 A. That was all the involvement I had with Michael Yoder.

3 Q. You met Michael Yoder, you went out with him somewhere?

4 A. Yes.

5 Q. Can you describe what happened, as far as your encounter,
6 and what you said to him and what he said to you, where
7 you went and what you did?

8 A. We were in a State Police vehicle, and again --

9 Q. Before you got in the vehicle.

10 A. I don't recall. I believe Michael Yoder was not in the
11 same car as myself in going between the Federal Court House
12 to where the State Police car was, which was over near the
13 FBI Building.

14 Q. Did there come a time that you and Michael Yoder got in
15 the same car?

16 A. Yes.

17 Q. Where was that, as best you can recall?

18 A. That was on -- I don't know the name of the street -- it
19 was on a street in the vicinity of the Federal Building.

20 Q. That was shortly after his appearance before the United
21 States Magistrate?

22 A. Right.

23 Q. Who got in this car with you and Mr. Yoder?

24 A. Investigators from the State Police, Orville Smith and
25 Freeman Shaw, myself and Michael Yoder.

- 1 Q. Do you recall, sir, who was driving the automobile?
- 2 A. I believe it was Investigator Shaw.
- 3 Q. It was not you?
- 4 A. No.
- 5 Q. Where were you sitting, if you recall?
- 6 A. I was sitting behind the driver in the rear.
- 7 Q. Where was Mr. Michael Yoder sitting?
- 8 A. Also in the rear on the other side.
- 9 Q. What did you say to Mr. Yoder at that time, if anything?
- 10 A. Idle conversation. I don't remember any specific conver-
- 11 sation.
- 12 Q. Did there come a time that you actually left and went
- 13 somewhere?
- 14 A. Yes.
- 15 Q. How did you know where to go?
- 16 A. He was directing us.
- 17 Q. When you say "he," what do you mean?
- 18 A. Michael Yoder.
- 19 Q. Do you recall what Michael Yoder said?
- 20 A. He indicated that he was going to direct us to where the
- 21 bank robbery money -- his portion of the bank robbery
- 22 money was located.
- 23 Q. Did he give you directions?
- 24 A. He did.
- 25 Q. Do you recall what the directions were generally, that is,

Direct and cross-examination of FBI Agent Heiner
at Suppression Hearing.

- 1 where did he direct you to go?
- 2 A. Chaffee, New York, Hand Road.
- 3 Q. During the trip from Buffalo to Chaffee, did you have any
- 4 further conversation with Mr. Yoder about this money or
- 5 about his involvement with the bank robbery?
- 6 A. Well, there was some discussion as to how the money would
- 7 be turned over to me. I explained to Mr. Yoder that we
- 8 would like him to show us where the money was so that we
- 9 could get permission to search that area from whoever
- 10 was the owner of that property or area or whatever, which
- 11 I explained to him was the reason for it, and he agreed.
- 12 Q. How did he agree, what words did he use, as best you can re-
- 13 call?
- 14 A. I don't recall his exact words.
- 15 Q. Did you have any further conversation with Mr. Michael
- 16 Yoder in the car?
- 17 A. I don't recall any other conversation.
- 18 Q. Did there come a time that you arrived in the vicinity of
- 19 Chaffee, New York?
- 20 A. Yes.
- 21 Q. About how long did that trip take?
- 22 A. I would estimate forty-five minutes.
- 23 Q. What did you do when you got in the vicinity of Chaffee,
- 24 New York?
- 25 A. We arrived at Hand Road, and Michael Yoder directed us to

Direct and cross-examination of FBI Agent Heiner
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1 a residence, the Pickering residence, I believe it was.
2 He stated that he wanted to go up to the residence and
3 speak to someone, we said fine, and he did, and he returned
4 a short while later with a young lady, and then I asked
5 him where the money was located, who is the owner of that
6 property, and he spoke with the young lady and advised me
7 it was a neighbor of the Pickering's, I believe the
8 neighbor's name was Mr. Smith. I then went to the Smith
9 residence and ascertained from Mr. Smith who was the owner.
10 He advised that the area or the property directly behind
11 the Pickering residence that he was the owner of. I
12 explained we had reason to believe that there was — there
13 would be evidence of a bank robbery located on that pro-
14 perty, and would he have any objection to us searching it
15 and removing anything that was there of evidentiary value.
16 He said he wouldn't, and signed the form indicating this.

17 Q. When you talked to this gentleman was Mr. Yoder in your
18 area at all, sir?

19 A. No, he wasn't.

20 Q. Where was he, if you know?

21 A. When I left he was in the vicinity of the driveway of the
22 Pickering residence. I can't recall if he was in the
23 State Police car. He had gotten out of it. The State
24 policemen were also in their vehicles.

25 Q. What did you do after talking to this Mr. Smith?

Direct and cross-examination of FBI Agent Heiner
at Suppression Hearing.

- 1 A. I returned to the state police vehicle and Michael Yoder,
2 and he directed us to --
- 3 Q. You said "he"?
- 4 A. Michael Yoder directed us to an area to the rear of the
5 Pickering residence where there was some brush, that is
6 the best I can describe it. It was evening by this time,
7 it was dark, and he located a small sort of a vinyl shaving
8 kit, and he indicated this was -- inside was his portion
9 of the bank robbery money that he left.
- 10 Q. What did you do with that particular vinyl case, sir?
- 11 A. We then -- I took it, we returned to the State Police car,
12 myself, the two state police officers and Michael Yoder,
13 again with the same seating arrangements with myself and
14 Mr. Yoder in the back, I'm not sure who was where in the
15 front, and we then counted the money. I counted the money,
16 I counted the number of bills and the denomination of
17 each bill. Michael Yoder witnessed me counting, and he
18 agreed on the count as we did it.
- 19 Q. Did you make any record, sir, of the count that you made
20 at the time?
- 21 A. I did.
- 22 Q. What kind of record did you make?
- 23 A. It was a plain document.
- 24 Q. Showing you Government's Exhibit 15 for identification, I
25 would like you, sir, to look at that and tell us what that

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1 is, if you know, please?

2 A. That appears to be a photostatic copy of the document
3 I drew up that evening.

4 Q. Do you know where the original is, sir?

5 A. The original is with the money.

6 Q. Where is that?

7 A. I believe in the FBI storage vault.

8 Q. Can you tell us, sir, whose signature appears at the bottom
9 of that form?

10 A. At the bottom of the form is my signature, Michael Yoder's
11 signature, and Freeman Shaw's signature.

12 Q. After you counted the money what did you do?

13 A. We returned it to the shaving kit, and I advised -- first
14 I asked Michael, "Is this all of the money, your portion
15 of the money, that you got from the Strykersville bank
16 robbery?" He said, "Yes." Then I said we are taking it
17 and he was free to leave at this point, and we said -- we
18 asked him if he wanted us to drop him off any place,
19 wherever he was staying, and he said no, he would stay
20 at the Pickering residence. At this time we left the
21 Pickering residence and went back to the Smith residence
22 and gave Mr. Smith a receipt for the property that had
23 been taken from his property.

24 Q. Mr. Yoder had gotten out of the car at that time?

25 A. Yes.

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1 Q. You saw him no longer that day?

2 A. That is the last I saw of him.

3 MR. WAGNER: I have nothing else. Thank you very much.

4

5 CROSS EXAMINATION BY MR. HARRINGTON:

6 Q. Mr. Heiner, directing your attention to the events con-
7 cerning Daniel Yoder on the date of November 18, 1976,
8 sir. You said you first encountered Daniel Yoder upstairs
9 in his apartment, is that right?

10 A. That is correct.

11 Q. This was after he had been taken into custody by some other
12 agents?

13 A. That is correct.

14 Q. Were you present when any conversation took place in his
15 apartment?

16 A. No.

17 Q. Then sometime he was led out by two other agents. Within
18 how long a period was it after that you followed?

19 A. I would estimate three minutes to five minutes.

20 Q. And the next time you saw Daniel Yoder he was in the FBI
21 car?

22 A. That is correct.

23 Q. With two other agents, Langer and Patrick?

24 A. That is right.

25 Q. Was he handcuffed at that time, if you know?

Direct and cross-examination of FBI Agent Heiner
at Suppression Hearing.

- 1 A. I believe he was.
- 2 Q. Can you recall at that time, your best recollection?
- 3 A. That is my best recollection.
- 4 Q. Were you present when anyone read him his rights in the
- 5 car?
- 6 A. Yes, I was.
- 7 Q. Who did that?
- 8 A. Agent Langer.
- 9 Q. And did Mr. Yoder indicate he understood his rights?
- 10 A. Yes.
- 11 Q. He declined to sign the waiver then?
- 12 A. That is right.
- 13 Q. Shortly after that Agent Gray came?
- 14 A. Yes.
- 15 Q. Between the time that his rights were read to him and
- 16 Agent Gray came, was there any questioning of Mr. Yoder?
- 17 A. I believe he was asked his name and his physical descrip-
- 18 tion.
- 19 Q. He was asked his physical description?
- 20 A. Yes.
- 21 Q. In the car?
- 22 A. I believe so.
- 23 Q. Who asked him that?
- 24 A. I believe Agent Langer.
- 25 Q. The next thing that happened Officer Gray shows up, is

Direct and cross-examination of FBI Agent Heiner
at Suppression Hearing.

1 that right?

2 A. Yes.

3 Q. He asked him questions concerning the advice of rights?

4 A. Yes.

5 Q. And did Mr. Yoder again decline to sign any waiver or give
6 any waiver concerning his rights at that point?

7 A. I don't recall.

8 Q. Now, how much longer were you with Daniel Yoder in the car
9 at that time?

10 A. I left at essentially the same time Agent Gray left.

11 Q. Was there any more conversation between any of the officers
12 and Daniel Yoder in the car?

13 A. No.

14 Q. Did you any time in the car hear Daniel Yoder make any
15 request regarding an attorney?

16 A. I don't recall.

17 Q. Did you ever hear any reference at all by anyone in the
18 car to an attorney with respect to Daniel Yoder at that
19 time?

20 A. Yes, when we read Daniel Yoder his rights, it was in there,
21 you have a right --

22 Q. That is all you recall about it?

23 A. Yes.

24 Q. When was the next time you saw Daniel Yoder?

25 A. When I returned to the FBI office.

Direct and cross-examination of FBI Agent Heiner
at Suppression Hearing.

- 1 Q. What time was that?
- 2 A. I don't recall the exact time.
- 3 Q. Give us your best recollection?
- 4 A. Oh, perhaps three o'clock. If I could see the log I would
- 5 be able to give you a better --
- 6 Q. Showing you Government's Exhibit 10, which is the arrest
- 7 and interview log, look at that and see if it refreshes
- 8 your recollection?
- 9 A. All right. 3:02.
- 10 Q. Now, at 3:02 when you saw Daniel Yoder, who else was
- 11 present then?
- 12 A. Tom Gray, Agent Gray.
- 13 Q. Just the two of you?
- 14 A. Well, there were other agents in the vicinity at this time.
- 15 Tom Gray and I, we were in the room with --
- 16 Q. Would that be an interrogation room?
- 17 A. Interview room.
- 18 Q. Did you come in with Agent Gray together or did you come
- 19 in at a separate time?
- 20 A. I don't recall if we came in at separate times or together.
- 21 It was essentially the same time.
- 22 Q. On that occasion did Officer Gray again read Daniel Yoder
- 23 his rights?
- 24 A. He did.
- 25 Q. You were present for that?

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1 A. I was.

2 Q. Did you participate at all in the reading of his rights to
3 him?

4 A. No.

5 Q. Did he make any request for an attorney on that occasion?

6 A. I don't recall.

7 Q. Did he ask any questions concerning an attorney or having
8 one appointed for him?

9 A. I don't recall if he did.

10 Q. How much longer were you with Daniel Yoder at FBI head-
11 quarters at that time?

12 A. Well, we were there until he was transported for his
13 initial appearance. The exact length of time, I would
14 have to again consult the log.

15 Q. Were you with him during the entire period from when you
16 came in for the interview at 3:02 until he was transported?

17 A. Again, I may not have been exactly in his presence, I was
18 in the general area.

19 Q. Did you hear his request regarding making any telephone
20 calls while you were with him?

21 A. I don't recall.

22 Q. Did you transport him to court?

23 A. Yes, I did.

24 Q. You did. Did you have a conversation with him on the way
25 over to the court?

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at Suppression Hearing.

- 1 A. I don't recall any conversation, specific conversation.
- 2 Q. Was anyone else with you when you came over?
- 3 A. Yes, there was someone else in the car. I don't recall
- 4 who it was. I remember I didn't drive the car over.
- 5 Q. Did you have any conversation with Daniel Yoder or were
- 6 you present while there was any conversation with Daniel
- 7 Yoder by Thomas Gray at FBI headquarters in which the
- 8 question of bail was discussed?
- 9 A. I believe Agent Gray explained to Mr. Yoder what would
- 10 occur at the initial appearance, and which at this time he
- 11 stated that bail will be set for you.
- 12 Q. Did Officer Gray make any representations to Mr. Yoder
- 13 concerning benefits to him with respect to bail if he
- 14 cooperated with you and gave you assistance in locating
- 15 the money?
- 16 A. No, he didn't.
- 17 Q. Are you sure of that?
- 18 A. Yes.
- 19 Q. There are many other things you can't recall, but you are
- 20 positive of that?
- 21 A. I remember Tom specifically saying, "Now, this isn't going
- 22 to affect your bail," because he wanted him to know that.
- 23 Q. He specifically said that to him, 'This is not going to
- 24 affect your bail, either for you or against you,' is that
- 25 right?

Direct and cross-examination of FBI Agent Heiner
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1 A. Yes.

2 Q. Was there any conversation between you and the other officer
3 with you on the way over to court from FBI headquarters
4 regarding bail?

5 A. I don't recall that.

6 Q. Was there any conversation regarding anything else pertaining
7 to this case on the way over?

8 A. I don't recall any.

9 Q. Was there any conversation at all?

10 A. Not that I recall.

11 Q. Now, when Officer Gray read Mr. Yoder his rights at FBI
12 headquarters, he again declined to sign the waiver, is that
13 right?

14 A. I don't recall.

15 Q. Officer, I show you Government's Exhibit 12, would that
16 refresh your recollection, sir?

17 A. That would.

18 Q. All right. Doesn't that form indicate that it was not
19 signed by him, is that right?

20 A. That is correct.

21 Q. Okay. Did either you or Officer Gray ask him why he wouldn't
22 sign the waiver?

23 A. I don't recall.

24 MR. HARRINGTON: I have no further questions.
25

Direct and cross-examination of FBI Agent Heiner
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CROSS EXAMINATION BY MR. MAHONEY:

Q. Good afternoon, Agent Heiner, I am Mark Mahoney. Did you have any contact with Mr. Michael Yoder prior to the 18th of November 1976?

A. No, I didn't.

Q. You were present at the FBI Office with Agent Tom Gray where you met Mr. Yoder that day?

A. I did.

Q. And you accompanied Mr. Yoder to the Magistrate's courtroom?

A. I did not accompany Michael Yoder, I accompanied Daniel Yoder.

Q. Were you present in the courtroom when Michael Yoder was arraigned by Judge Maxwell?

A. I was.

Q. At that time he was advised of the charges that were laid against him, was he not?

A. He was.

Q. He was advised that he had a right to an attorney?

A. Yes.

Q. This was all by Judge Maxwell?

A. Yes.

Q. At that time Judge Maxwell indicated to him that he was going to appoint an attorney to represent him?

A. He did.

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- 1 Q. Do you recall of a mention of my name, Mark Mahoney?
- 2 A. No, I don't recall.
- 3 Q. At that point you and the other agents present were aware
- 4 that an attorney was going to be assigned to represent
- 5 Michael Yoder?
- 6 A. Yes.
- 7 Q. Was any attempt made -- strike that. At that time it was
- 8 your intention next to take Mr. Yoder, Michael Yoder, to
- 9 the area where he would possibly direct you to where money
- 10 could be found, is that right?
- 11 A. Yes.
- 12 Q. Now, did anybody that time among all the agents who were
- 13 present or United States Attorneys undertake contact the
- 14 attorney to be assigned by Judge Maxwell to represent this
- 15 individual?
- 16 A. I don't know, I didn't.
- 17 Q. I will show you Government's Exhibit 12(a), which is the
- 18 interview log from 11/18/76, which is a reference to the
- 19 interview of Michael Yoder, is that correct?
- 20 A. That is correct.
- 21 Q. You are familiar with that document, are you not?
- 22 A. Yes, I am.
- 23 Q. Your initials appear on it?
- 24 A. They do.
- 25 Q. All right, they do. Beginning with the entry at what time?

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at Suppression Hearing.

- 1 A. 4:15.
- 2 Q. That time refers to the appearance before the United States
- 3 Magistrate?
- 4 A. It does.
- 5 Q. The interview log indicates prior to that, at 3:30, Mr.
- 6 Yoder was advised of his rights, correct?
- 7 A. That is correct.
- 8 Q. Was there any subsequent time on that day -- excuse me --
- 9 Exhibit 12(b) indicates an Advice of Rights form dated
- 10 11/18/76, typed at 3:30 P.M., correct?
- 11 A. That is correct.
- 12 Q. All right. You would conclude that that refers -- that
- 13 the interview log refers to this document, Government's
- 14 Exhibit 12(b), which is before you?
- 15 A. Yes.
- 16 Q. All right. Was there any subsequent time that day that
- 17 Mr. Yoder was advised to his rights, to your knowledge?
- 18 A. I don't recall right now.
- 19 Q. Let me ask you this. Showing you the second page of
- 20 Government's Exhibit 12(a), the interview log, I ask you
- 21 whose handwriting the entries are in on that second page?
- 22 A. That is my handwriting.
- 23 Q. Then it says Orville Smith, you didn't write that, did you?
- 24 A. No.
- 25 Q. The entries beginning at 5:41 A.M. and continuing to 7:18 --

Direct and cross-examination of FBI Agent Heiner
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1 those are all P.M., I'm sorry -- 5:41 P.M. to 7:18 P.M.,
2 those entries are in your handwriting?

3 A. They are.

4 Q. And they all relate to the transportation of Mr. Yoder to
5 wherever it was you went, Sardinia or someplace?

6 A. Right.

7 Q. Nowhere in there does it indicate that he was advised of
8 his rights?

9 A. No, it doesn't.

10 Q. By the way, does it indicate any attempts made to contact
11 the attorney who was assigned by Judge Maxwell?

12 A. No, it doesn't.

13 Q. Of your own knowledge, at that time did you have any other
14 source to determine the location of the money that Mr.
15 Yoder led you to, beside the information that Mr. Yoder
16 gave you?

17 A. Could you restate the question?

18 Q. At that time when you left the United States Court House,
19 to go to Sardinia, did you have any other source, any other
20 means to locate the money which Mr. Yoder eventually led
21 you to?

22 A. Not to my knowledge.

23 Q. All right. To your knowledge, he was the only access for
24 your discovery of that money?

25 A. Perhaps.

1 Q. To your knowledge?

2 A. At that time, no.

3 Q. And the information that he gave you that led you to that
4 money was the information which was provided to you while
5 he was -- provided while he was in your presence on the
6 18th day of November subsequent to leaving the United States
7 Court House?

8 A. That is right.

9 Q. That is because, as you stated, he was in your custody, he
10 directed you to the location of the money?

11 A. That is correct.

12 MR. MAHONEY: Thank you very much.

13 THE COURT: Mr. Lamantia, do you want to ask any questions?

14 MR. LAMANTIA: No, your Honor.

15 MR. WAGNER: I have nothing else, your Honor.

16 THE COURT: We have concluded the evidence at this time,
17 and I will listen to any argument anybody has
18 on it at some convenient time, not today.

19 MR. MAHONEY: I have discussed with my client the possibility
20 of his testifying, and the possibility that
21 the other defendants also have an interest.
22 Perhaps we can --

23 THE COURT: I don't want to cut you off. You may have
24 other witnesses you want to call also, Mr.
25 Mahoney. I don't know what my schedule Monday

**Direct and cross-examination of FBI Agent Patrick
at Suppression Hearing.**

Direct and cross-examination of FBI Agent Patrick
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1 Charles Patrick. My understanding was they
2 asked that he be here to testify. He is here
3 prepared to be called by -- I can't remember
4 whether it was Mr. Mahoney or Mr. Lamantia.

5 MR. HARRINGTON: Your Honor, I would ask that Mr. Patrick be
6 called to the stand.

7
8 C H A R L E S P A T R I C K, 7014 Waring Circle, Derby,
9 New York, called as a witness on behalf of the defendant Daniel
10 Yoder, and being first duly sworn, testified as follows:

11
12 MR. LAMANTIA: The Government has rested on its proof?

13 THE COURT: Yes. Now, in the order of affairs, Mr.
14 Lamantia, it is not you who has called Mr.
15 Patrick, but you, Mr. Harrington, have called
16 him?

17 MR. HARRINGTON: Yes, your Honor.

18 THE COURT: And this order of proceedings all right with
19 you?

20 MR. LAMANTIA: Yes. I believe this agent has nothing to
21 do with Brian Buchanan.

22 THE COURT: All right.

23 MR. MAHONEY: I may have some questions to ask of this
24 witness.

25 THE COURT: You are in the second batting position, so

Direct and cross-examination of FBI Agent Patrick
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you may.

DIRECT EXAMINATION BY MR. HARRINGTON:

Q. Mr. Patrick, would you tell us how you are employed?

A. Federal Bureau of Investigation, special agent.

Q. How long have you been so employed?

A. One year.

Q. And were you on duty on November 18, 1976?

A. Yes.

Q. Did you participate in the arrest of Daniel Yoder on that day?

A. I did.

Q. Could you tell us what you remember of that arrest that day?

A. Well, I was asked to go to Sardinia, New York, to participate in the arrest. I was stationed by the front door downstairs. Special Agents Gray and Langer went upstairs. They were up there for a few minutes, and Special Agent Langer came out and told me to come up. When I went up Special Agent Gray was finishing advising Daniel of what he was being arrested for.

Q. Is that the first contact that you had with Daniel Yoder that day?

A. Yes, sir.

Q. Where was this?

Direct and cross-examination of FBI Agent Patrick
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- 1 A. I don't recall the address, it was in Sardinia, New York.
- 2 Q. And did anything else happen while you were present in
- 3 the apartment of Daniel Yoder?
- 4 A. He was allowed to get dressed, and he was searched, and
- 5 that was about it in the apartment.
- 6 Q. Was there any other conversation between you and Daniel
- 7 Yoder or Thomas Gray and Daniel Yoder?
- 8 A. No, sir.
- 9 Q. No other conversation involving Daniel Yoder in the
- 10 apartment?
- 11 A. Not that I recall.
- 12 Q. How long were you in the apartment?
- 13 A. Just a matter of a few minutes; three, four, five minutes
- 14 I would say.
- 15 Q. What happened after that?
- 16 A. Then myself and Special Agent Thomas Langer took Daniel
- 17 back down to the car, the Bureau car.
- 18 Q. Was there any conversation with Daniel Yoder on the way to
- 19 the car?
- 20 A. No, sir, not that I recall.
- 21 Q. What happened after you got to the car?
- 22 A. We were joined by Special Agent Neil Heiner. Special Agent
- 23 Langer read the Interrogation and Advice of Rights form to
- 24 Dan, and then he handed it to him and he read it himself.
- 25 Special Agent Langer asked him if he understood it, he said

Direct and cross-examination of FBI Agent Patrick
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1 he did, that he didn't wish to sign it.

2 Q. Was there any further discussion with Mr. Yoder at that
3 point?

4 A. I believe Special Agent Langer asked him if he would like
5 to make a statement and Dan said no.

6 Q. Then what happened?

7 A. A few minutes after that we were joined by Special Agent
8 Gray. He asked Dan if he had been advised of his rights,
9 to which he responded yes. He again asked him if he would
10 like to make a statement and Dan again replied no, and at
11 that time Special Agent Gray told us to take him back to
12 the Buffalo Office.

13 Q. How long a period of time were you in the car from when
14 you first entered until Special Agent Gray told you to
15 take him back to the office?

16 A. Approximately an hour.

17 Q. An hour in the automobile?

18 A. Around an hour, maybe a few minutes more or less.

19 Q. During that entire hour period then Mr. Yoder answered no
20 questions, other than with respect to his understanding of
21 the Advice of Rights, is that right?

22 A. There was general type conversation, such as, you know,
23 how do you like Sardinia, the weather, that type of thing.
24 Actually there was very little conversation at all after
25 Special Agent Gray had asked him if he would like to make

Direct and cross-examination of FBI Agent Patrick
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1 a statement.

2 Q. How soon after Special Agent Gray told you to take him
3 down did you in fact leave for your office?

4 A. We left right then.

5 Q. How long did it take you to get down?

6 A. Approximately an hour. I am not sure without referring
7 to the log.

8 Q. Who was in the car at that time?

9 A. Myself, Dan Yoder and Special Agent Tom Langer.

10 Q. Was there any conversation with Dan Yoder on the way down?

11 A. Yes, sir.

12 Q. Can you recall the substance of that conversation?

13 A. No. Just general conversation, like I said before.

14 Q. Were any questions directed to Mr. Yoder on the way down-
15 town pertaining to the charges for which he was arrested?

16 A. Not that I recall, no.

17 Q. On the way downtown, who was it that was talking to Mr.
18 Yoder, was it you or Agent Langer?

19 A. Well, we were all talking. Special Agent Langer was in
20 the back seat with Dan, I was driving.

21 Q. You can't recall any conversation pertaining to the
22 Strykersville bank robbery, is that right?

23 A. No, sir.

24 Q. Was there any conversation with Mr. Yoder concerning
25 obtaining an attorney?

Direct and cross-examination of FBI Agent Patrick
at Suppression Hearing.

1 A. There was when he was arrested, the Advice of Rights form,
2 I believe it is stated in there that you have a right to
3 an attorney, but after that, not that I recall.

4 Q. When he was advised that he had a right to an attorney
5 did Mr. Yoder ask for an attorney? ✓

6 A. No, sir. The statement was read to him, and he read it.

7 Q. Did anything unusual happen on the way downtown that you
8 recall?

9 A. Not that I recall, no.

10 Q. Were you stopped for speeding?

11 A. No, sir, not that I recall.

12 Q. Do you remember what route you took coming down?

13 A. I believe it was 216, I'm not sure, I'm not too familiar
14 with that area.

15 Q. And what happened after you got Mr. Yoder downtown?

16 A. We took him up to the office and I fingerprinted him and
17 photographed him.

18 Q. Do you recall what time of day that was?

19 A. I would say around three o'clock.

20 Q. Was there any further conversation with Mr. Yoder at FBI
21 headquarters that you were a part of?

22 A. No, sir, I don't believe so. At one point I believe he
23 did request to make a telephone call.

24 Q. Do you recall when that was, sir?

25 A. No, sir, I don't. It was shortly before three o'clock.

Direct and cross-examination of FBI Agent Patrick
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- 1 Q. Can you recall just generally, in terms of how soon you
2 had gotten there at FBI headquarters, when is it that he
3 requested to make a telephone call?
- 4 A. I would say within a half hour, forty minutes.
- 5 Q. Were you present when he requested the telephone call?
- 6 A. I don't recall if I was right there or not. I know I did
7 go out while he made the call.
- 8 Q. Did you overhear the call in any way, sir?
- 9 A. No, sir.
- 10 Q. And was anyone with Mr. Yoder when he made the call?
- 11 A. I was there.
- 12 Q. You were there in the same room?
- 13 A. In the same room, yes.
- 14 Q. You could not hear the telephone call, is that right?
- 15 A. No. I really wasn't paying that much attention.
- 16 Q. Do you know who he called?
- 17 A. I believe his father.
- 18 Q. Were any other agents present at that time?
- 19 A. I don't recall if there was or not.
- 20 Q. Where was the call made from, do you recall?
- 21 A. From the FBI Office.
- 22 Q. Do you recall where in the FBI Office?
- 23 A. Yes, sir. It would have been in the Squad 2 area, which
24 is just off the interview room.
- 25 Q. Now, up until the point he made his telephone call was ne

Direct and cross-examination of FBI Agent Patrick
at Suppression Hearing.

1 again advised of his rights while you were there?

2 A. Not that I recall.

3 Q. Do you know whether he was ever advised of his rights
4 again after that?

5 A. No, sir, I don't.

6 Q. When did your involvement with Daniel Yoder on that day
7 terminate?

8 A. After I fingerprinted him and photographed him.

9 Q. Did you attempt in any way to obtain a statement from Mr.
10 Yoder again on that day?

11 A. No, sir.

12 Q. Do you recall what time of day you last saw Daniel Yoder
13 on that day?

14 A. It was shortly before we left to come over to the Magis-
15 trate's Office, somewhere around four o'clock.

16 Q. Was there a period of time at the FBI headquarters that
17 he was out of your presence then?

18 A. Yes, sir.

19 Q. How long a period was that?

20 A. A half hour, forty-five minutes.

21 Q. Do you know where he was at that time?

22 A. I believe that he talked to Special Agent Gray again, you
23 know. I wasn't there, I don't know. I think that is
24 what took place.

25 Q. And did you have any conversation with Mr. Daniel Yoder

Direct and cross-examination of FBI Agent Patrick
at Suppression Hearing.

- 1 after he made the telephone call to his father?
- 2 A. No, sir, not that I recall.
- 3 Q. Did he tell you what his father told him on the telephone?
- 4 A. No, sir.
- 5 Q. Did you ask?
- 6 A. No.
- 7 Q. Did you ask Mr. Yoder any questions at all on that day?
- 8 A. No, sir.
- 9 Q. Now, you said that the last time you saw him was shortly
- 10 before he came over to be arraigned in front of the
- 11 Magistrate?
- 12 A. Yes, sir.
- 13 Q. How long did you see him on that occasion?
- 14 A. Just for a few minutes while we were getting ready to come
- 15 out.
- 16 Q. Did you have any conversation with him then?
- 17 A. No.
- 18 Q. Did you bring him over here?
- 19 A. No.
- 20 Q. Did you bring anyone over?
- 21 A. I came over with his brother, Mike.
- 22 Q. Did you see Daniel Yoder again that day?
- 23 A. In the Magistrate's Office.
- 24 Q. What was the circumstance in which you saw him in the
- 25 Magistrate's Office?

Direct and cross-examination of FBI Agent Patrick
at Suppression Hearing.

1 A. They were being arraigned.

2 Q. You were present on that occasion?

3 A. Yes, sir.

4 Q. Did you see him after the arraignment?

5 A. Briefly in the hall outside.

6 Q. What did you do after the arraignment?

7 A. After the arraignment I was released, I returned to the
8 office.

9 Q. You were no longer involved with Daniel Yoder on that day?

10 A. No.

11 MR. HARRINGTON: I have no further questions.

12 THE COURT: Mr. Mahoney?

13

14 CROSS EXAMINATION BY MR. MAHONEY:

15 Q. Agent Patrick, my name is Mark Mahoney, I am representing
16 Mike Yoder. On the 18th of November would you tell us
17 what was the first time -- let me ask you this -- strike
18 that. When was the first time you recall meeting Michael
19 Yoder?

20 A. When he came into the FBI Office in downtown Buffalo.

21 Q. And what day would that be?

22 A. That was on the 18th.

23 Q. And that was subsequent to the arrest of Daniel Yoder?

24 A. Yes, sir.

25 Q. And he came voluntarily to the FBI Office?

Direct and cross-examination of FBI Agent Patrick
at Suppression Hearing.

- 1 A. That is correct.
- 2 Q. At that time did you talk to him before accompanying him
- 3 to the arraignment?
- 4 A. Not directly. I was present when Special Agent Langer
- 5 advised him of his rights as stated on the Interrogation
- 6 Advice of Rights form.
- 7 Q. Were you present with Mr. Yoder during the rest of that
- 8 afternoon?
- 9 A. For a time. I also fingerprinted and photographed him.
- 10 Q. Did you travel with them outside the city to where they
- 11 subsequently recovered some money?
- 12 A. No, sir.
- 13 Q. All right. In any event, did you -- were you present at
- 14 the arraignment?
- 15 A. Yes, sir.
- 16 Q. All right. When was the last time you saw Michael Yoder
- 17 that day?
- 18 A. Shortly after the arraignment was concluded.
- 19 Q. At the arraignment you heard Judge Maxwell advise the
- 20 defendant of his rights?
- 21 A. Yes, sir.
- 22 Q. In fact, all the defendants were there, he advised them
- 23 all of their rights?
- 24 A. Yes.
- 25 Q. Among the rights was the right to an attorney?

Direct and cross-examination of FBI Agent Patrick
at Suppression Hearing.

1 A. Right.

2 Q. Did the Judge indicate at that time that he was going to
3 assign an attorney to represent the defendant?

4 A. I believe he told them he would review their financial
5 statement and would make a decision at that time.

6 Q. And did you before leaving that day determine whether or
7 not the Magistrate made a determination as to the financial
8 eligibility of these men?

9 A. No, sir, I did not.

10 Q. All right. Were you responsible in any way for the
11 decision to take Michael Veder out of the city at that time
12 for the purposes of further investigation of the case?

13 A. No, sir. As I explained before, at the conclusion of the
14 arraignment I was released and returned to the office.

15 Q. All right. Subsequent to having heard Special Agent Langer
16 advise the defendant of his rights, did you hear anybody
17 else beside the Magistrate advise him of his rights?

18 A. I don't believe so, no.

19 MR. MAHCNEY: I have nothing further, your Honor.

20 THE COURT: Mr. Wagner?

21 MR. WAGNER: I have nothing, your Honor.

22 THE COURT: Any questions you want to ask, Mr. Lamantia?

23 MR. LAMANTIA: No, sir.

24 THE COURT: Anything further, Mr. Harrington?

25 MR. HARRINGTON: No, your Honor.

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**Direct and cross-examination of Daniel Yoder
at Suppression Hearing.**

Direct and cross-examination of Daniel Yoder at
Suppression Hearing.

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

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1 THE COURT: Mr. Harrington?

2 MR. HARRINGTON: Yes. Daniel Yoder.

3
4 DANIEL MURRAY YODER, 27 Hill Street, Delevan,
5 New York, called as a witness on his own behalf, and being first
6 duly sworn, testified as follows:
7

8 DIRECT EXAMINATION BY MR. HARRINGTON:

9 Q. Mr. Yoder, you are a defendant in this proceeding, isn't
10 that right?

11 A. Yes.

12 Q. And you were arrested on November 18, 1976?

13 A. Yes.

14 Q. Could you tell us the circumstances of your arrest, sir?

15 A. You mean on the arrest?

16 Q. Yes.

17 A. They came up to my apartment, the apartment I shared with
18 Wayne Stadlmyer, and they knocked on the door, I opened it,
19 and Tom Gray came in and identified himself as an FBI agent,
20 and I knew why they were there because I heard around that
21 they were looking for me. I just sat down on the couch,
22 they told me to get dressed, and they searched me and read
23 me my rights and took me down to the car.

24 Q. And you said they -- you mentioned Tom Gray, was there
25 anyone else present?

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

- 1 A. There was -- I don't know -- I know Heiner was there and
2 there was a state trooper there, and a Wyoming County
3 sheriff, and another investigator, I think he was from
4 the state, too.
- 5 Q. You said that your rights were read to you in the apartment?
- 6 A. Yes.
- 7 Q. Were any questions asked of you in the apartment?
- 8 A. No, not that I can remember.
- 9 Q. What happened after you got dressed?
- 10 A. They cuffed me and then Langer and Patrick took me down
11 to the car, the FBI car, and we got in it.
- 12 Q. How long a period of time had gone by from when they first
13 came in to that point in time?
- 14 A. About five minutes.
- 15 Q. What happened after you were taken down to the car?
- 16 A. I was advised of my rights by Langer, and then he asked if
17 I wanted to make a statement. I said no, and that was
18 about it.
- 19 Q. Was this done inside the car or outside?
- 20 A. Inside the car.
- 21 Q. How soon after you got into the car did that happen?
- 22 A. Immediately.
- 23 Q. And what happened after that?
- 24 A. We sat there for awhile, and Langer kept asking if I wanted
25 to make a statement, and he wanted to know information about

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

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1 my height, my weight, all that, and after about ten minutes
2 Tom Gray came down with Heiner, and they both got into the
3 car. I was read the rights again, asked if I wanted to
4 make a statement, I said no.

5 Q. All right. And who read you the rights the second time?

6 A. Thomas Gray.

7 Q. What happened after that?

8 A. After I said I didn't want to make a statement, Tom got out
9 and told Langer and Patrick to take me to the FBI Office
10 and fingerprint me and photograph me.

11 Q. Then what happened?

12 A. We left.

13 Q. Would you tell us how long a period of time had gone by
14 from when you got into the car until you left?

15 A. About twenty-five minutes.

16 Q. And when you left who was in the car?

17 A. Patrick and Langer.

18 Q. Where was everyone in the car?

19 A. Patrick was driving, and Langer was sitting on the driver's
20 side and I was sitting on the passenger side in the back
21 seat.

22 Q. Were you handcuffed at this time?

23 A. Yes.

24 Q. Were the handcuffs ever removed from you from the time that
25 they were placed on you in the apartment until you left in

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

1 the car?

2 A. No.

3 Q. Where were you handcuffed?

4 A. In front of me.

5 THE COURT: You were sitting in the back seat by yourself?

6 THE WITNESS: No, Langer was back there.

7 BY MR. HARRINGTON:

8 Q. And on the way downtown did anything happen?

9 A. Yes, we got stopped for speeding. We didn't get stopped,
10 the state trooper came up and Patrick flashed his badge
11 and kept going.

12 Q. Where were you travelling, do you recall?

13 A. On New York 400.

14 Q. Was there any conversation at all in the car while you were
15 on the way downtown?

16 A. Yes, Langer was trying to get me to make a statement most
17 of the way in there.

18 Q. Do you recall what was said?

19 A. No, not really. I just remember that I kept saying I
20 want to see a lawyer first. ✓

21 Q. And how long did the trip downtown take?

22 A. About an hour.

23 Q. And did you in fact make any statement while you were on
24 the way downtown?

25 A. No.

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

- 1 Q. Was there any other call or thing other than about the
2 particular thing that you were looking for, in the car
3 that you recall?
- 4 A. Patrick and Langer were talking about something. I wasn't
5 listening.
- 6 Q. Did you have any conversation in any way with either Patrick
7 or Langer coming downtown?
- 8 A. No, just to say I wanted a lawyer.
- 9 Q. After you arrived downtown where did you go?
- 10 A. To the FBI Office.
- 11 Q. Do you recall what time of day this was?
- 12 A. No, I don't. I was a little nervous at the time.
- 13 Q. What time of the day were you arrested?
- 14 A. Just after noon.
- 15 Q. You were in the car then -- in about five minutes you were
16 taken down, you were in the car twenty-five minutes or
17 so, and it took approximately an hour to get down?
- 18 A. Yes.
- 19 Q. Now, after you arrived at FBI headquarters, what happened
20 then?
- 21 A. I was fingerprinted and photographed.
- 22 Q. Do you recall who did that?
- 23 A. Patrick and Langer.
- 24 Q. And what happened after that?
- 25 A. I was taken to the interrogation room and sat down, and

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

- 1 then they read me my rights again, and asked if I wanted
2 to sign a statement, and I said no.
- 3 Q. Going back a bit, can you recall who took you into the
4 interrogation room?
- 5 A. Langer, I think.
- 6 Q. And was it that read you your rights?
- 7 A. Langer.
- 8 Q. And were you read your rights out loud?
- 9 A. Yes.
- 10 Q. Was anything given to you to read?
- 11 A. Yes, the form of the Advice of Rights.
- 12 Q. Did you sign the form?
- 13 A. No.
- 14 Q. Was that form also showed to you in the car?
- 15 A. Yes.
- 16 Q. And were you asked to sign the form then?
- 17 A. Yes.
- 18 Q. Did you sign the form?
- 19 A. No.
- 20 Q. Mr. Yoder, showing you Government's Exhibit 11 that is
21 in evidence for purposes of this hearing, I ask you to
22 look at that document and tell me if you can recognize
23 that?
- 24 A. It looks like one of the forms they had me read over at
25 one time during the day.

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

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1 Q. Can you identify that particular day, sir?

2 A. No.

3 Q. You can't?

4 A. No.

5 Q. Showing your Government's exhibit 12, also marked in evidence,

6 I ask you to look at that document and tell us if you can

7 identify that?

8 A. Another one of the same thing.

9 Q. Can you identify that as a form that was used --

10 A. No.

11 Q. -- with you that day?

12 A. No.

13 Q. Did you ever sign any forms concerning your acknowledgement
14 of your rights, sir?

15 A. No.

16 Q. Now, when your rights were read to you was the portion of
17 this form which says Waiver of Rights also read aloud to
18 you?

19 A. Yes.

20 Q. It was read aloud to you?

21 A. Yes.

22 Q. Did you have an opportunity also to read that yourself?

23 A. Yes.

24 Q. Did you understand that?

25 A. Yes, that's why I didn't sign it.

H. T. Noel & E. F. Kuisley

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Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

- 1 Q. And directing your attention to Government's Exhibit 11,
2 sir, could you tell me what in that statement it was that
3 led you not to sign that statement?
- 4 A. The Waiver of Rights, that whole paragraph. It says that
5 I will give up my right to a lawyer and answer the questions
6 and make a statement, and I was not willing to do this.
- 7 Q. While you were at FBI headquarters, sir, did you make any
8 telephone calls?
- 9 A. Yes, to my dad.
- 10 Q. Can you recall when you made that call?
- 11 A. No, it was after I was fingerprinted and photographed and
12 taken to the interrogation room, and then I said I wanted
13 to make a telephone call.
- 14 Q. Do you recall who you asked that of?
- 15 A. Langer.
- 16 Q. And you were allowed to do so?
- 17 A. Yes.
- 18 Q. And did you get hold of your father by phone?
- 19 A. Yes.
- 20 Q. Did you have a conversation with him?
- 21 A. Yes.
- 22 Q. Did you explain to him what your circumstances were?
- 23 A. Yes.
- 24 Q. Okay. What did your father tell you?
- 25 A. Told me to get a lawyer.

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

1 Q. Now, after you spoke with your father, what happened to
2 you then?

3 A. I was taken back to the interrogation room, and they told
4 me my brother was there, I wasn't supposed to say anything
5 to him, and they hustled me into the room and shut the
6 door.

7 THE COURT: Mr. Noel, could you repeat Mr. Yoder's prior
8 answer?

9
10 (Thereupon the reporter read as follows:

11 "Answer: He told me to get a lawyer.")
12

13 BY MR. HARRINGTON:

14 Q. Could you repeat what happened after you made the call?

15 A. I was taken back to the interrogation room and told not to
16 talk to my brother who was in the building at that time.

17 Q. Who told you that?

18 A. Langer.

19 Q. Did you see your brother then?

20 A. Yes.

21 Q. Did you make any request of them concerning an attorney at
22 that time after speaking to your father?

23 A. No, I knew I had to wait.

24 Q. How did you know you had to wait?

25 A. Just the way the law goes, I know that much about it.

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

- 1 Q. Have you ever been arrested before?
- 2 A. No.
- 3 Q. Have you ever been in custody by the police before?
- 4 A. No.
- 5 Q. Had you ever had your rights read to you in any way before?
- 6 A. No.
- 7 Q. Did you understand what the form said when you read it?
- 8 A. Yes.
- 9 Q. Did anybody in the FBI explain to you how you would get
- 10 an attorney?
- 11 A. Not until I spoke to Tom Gray.
- 12 Q. What did he tell you?
- 13 A. He told me that I would get a lawyer appointed to me after
- 14 we went to the Magistrate, and he had to appoint the
- 15 lawyer, if my financial statement was, you know, not that
- 16 I could afford one.
- 17 Q. At that time, sir, could you in fact afford to retain an
- 18 attorney?
- 19 A. No.
- 20 Q. Now, after you had advised the FBI agents that you didn't
- 21 want to make a statement at the FBI office, did they con-
- 22 tinue to question you, sir?
- 23 A. Yes.
- 24 Q. And did there come a time when you did agree to give them
- 25 some information?

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

- 1 A. Yes, but it was only after certain questions that I asked ✓
2 them and I got -- I was dissatisfied with the answers I got.
3 Q. Can you tell us what you are referring to?
4 A. I was referring to what would help me in this situation
5 that I am in, and Tom told me it would probably help if I
6 turned some money in and if I made a statement. I said,
7 "Well, I don't want to do either of them." He elaborated
8 on that and finally I told him I would turn in some money.
9 Q. Can you tell us what he told you, sir?
10 A. He told me that -- something about the district attorney
11 could do something, could talk to the Magistrate about
12 it, and I might be able to get -- able to be out on my
13 personal recognizance.
14 Q. All right. Were you concerned about being released from
15 jail at that time, released from custody?
16 A. Yes.
17 Q. And how soon did this conversation take place before you
18 were taken over to the Magistrate's Office?
19 A. Almost immediately before.
20 Q. And is that when you gave information concerning where the
21 money was?
22 A. Yes.
23 Q. Can you recall specifically what Special Agent Gray told
24 you about turning in the money and the relationship to
25 bail?

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

- 1 A. Oh, I can't remember exactly what he said, but he made it
2 sound like it would be a little easier for me if I did.
3 Q. Did you think that was the case in your own mind, sir?
4 A. I thought it probably would help, yes.
5 Q. Were you subsequently taken over to the Magistrate?
6 A. Yes.
7 Q. And did the Magistrate read you your rights?
8 A. Yes.
9 Q. Did he tell you that an attorney could be appointed for
10 you if you could not afford one?
11 A. Yes.
12 Q. Was one appointed for you?
13 A. Not until the next day.
14 Q. All right. The next day did you appear in court again?
15 A. Yes.
16 Q. All right. Was it at that time that I was appointed to
17 represent you, sir?
18 A. Yes.
19 Q. After you were arraigned on the loan, did you continue
20 with Officer Gray at that time?
21 A. Yes.
22 Q. What happened then?
23 A. He left the Magistrate's and got into his car, and they
24 proceeded to collect the money I had stashed.
25 Q. And after you were arraigned on that day, did you have any

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

1 other means of transportation back to your home?

2 A. No.

3 Q. And prior to your arraignment you had agreed to show Mr.

4 Gray where the money was, is that right?

5 A. Yes.

6 MR. HARRINGTON: I have no further questions.

7

8 CROSS EXAMINATION BY MR. WAGNER:

9 Q. Mr. Yoder, sir, when you were first arrested by the agents

10 of the FBI, you mentioned they had advised you of your

11 rights?

12 A. Yes.

13 Q. You later said they read some advice to you off a form,

14 is that right?

15 A. Yes.

16 Q. Can you recall seeing them looking at the form and reading

17 from it to you?

18 A. Yes.

19 Q. Mr. Harrington showed you what has been marked as Govern-

20 ment's Exhibits 11 and 12, and, first of all, sir, the print-

21 ing on that is the same on both of those?

22 A. Yes. It looks like one of them they showed me to read.

23 Q. You don't know exactly, but it appears to you at this time

24 to be the same form?

25 A. Yes.

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

- 1 Q. And your recollection is that they did read the form to
2 you?
3 A. Yes.
4 Q. They read it to you and you read it over?
5 A. Yes.
6 Q. You did that?
7 A. Yes.
8 Q. And when they read it to you -- after you read it yourself,
9 you realized they had read all of it to you, is that right?
10 A. Yes.
11 Q. They had read the whole form to you?
12 A. Yes.
13 Q. And they then asked you to sign it, and you decided not
14 to sign it?
15 A. Yes.
16 Q. And you said that was a conscious decision by you because
17 of what you read on the form?
18 A. Yes.
19 Q. And you told us that you did understand the form?
20 A. Yes.
21 Q. You were aware of its implications?
22 A. Yes.
23 Q. And you recognized that if you did give a statement, as
24 it said in the form, it would be used against you in court?
25 A. Yes.

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

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- 1 Q. You had certain rights that the Court set forth?
- 2 A. Yes.
- 3 Q. And at the time of your arrest, in the car outside of your
- 4 apartment, you decided at that time not to give up those
- 5 rights?
- 6 A. Yes, I wanted to speak to a lawyer first.
- 7 Q. You wanted not to talk?
- 8 A. Yes.
- 9 Q. And they honored that request, that is, they didn't question
- 10 you further at that point, is that right?
- 11 A. Yes, they did. On the way into Buffalo they kept asking
- 12 me questions.
- 13 Q. At that point they didn't question you further in the car?
- 14 A. No.
- 15 Q. You said that there came a time shortly after your arrest
- 16 that you -- or sometime after your arrest that you actually
- 17 drove in the car to Buffalo?
- 18 A. Yes.
- 19 Q. You said, sir, that they asked you questions then?
- 20 A. Yes.
- 21 Q. What kind of questions were they, do you recall?
- 22 A. Like if we thought we could get away with it. I said, "Get
- 23 away with what?" They wanted to -- you know -- little
- 24 things they were trying to pump out of me.
- 25 Q. Did they ask you questions about this bank robbery?

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

- 1 A. Yes.
- 2 Q. What did you say in response to those questions?
- 3 A. "I want to see a lawyer."
- 4 Q. Can you give me an estimate as to how many times you told
- 5 the agents, according to your version, that you asked for a
- 6 lawyer in that car?
- 7 A. Five or six times.
- 8 Q. Okay. Five or six times in the car ride --
- 9 A. Yes.
- 10 Q. -- you asked for a lawyer?
- 11 A. Yes.
- 12 Q. What did they tell you on those occasions?
- 13 A. They didn't tell me nothing, they didn't say nothing.
- 14 Q. Did they ask you questions after that or --
- 15 A. Yes, continued asking questions.
- 16 Q. Now, did they ever tell you that the FBI did assign lawyers?
- 17 A. Not until I talked to Thomas Gray.
- 18 Q. You came back to the -- by the way, you didn't answer any
- 19 questions in the car?
- 20 A. No.
- 21 Q. Did they also have a general conversation with you about
- 22 your background?
- 23 A. No.
- 24 Q. Height, weight?
- 25 A. That stuff, yes.

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

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- 1 Q. Any other general conversation?
- 2 A. No.
- 3 Q. When you come back to the FBI Office you were again advised
- 4 about your rights?
- 5 A. Yes.
- 6 Q. And as far as you could tell, it was again off one of these
- 7 forms like Government's Exhibits 11 or 12?
- 8 A. Yes.
- 9 Q. That form was read to you?
- 10 A. Yes.
- 11 Q. As you said, the whole form was read to you?
- 12 A. Yes.
- 13 Q. I take it again you understood the form? ✓
- 14 A. Yes.
- 15 Q. And the form, when it was read to you, was it also given
- 16 to you?
- 17 A. Yes.
- 18 Q. And you also read the entire form?
- 19 A. Yes.
- 20 Q. And it appeared to be the same form that had been read to
- 21 you and that you had seen earlier?
- 22 A. Yes.
- 23 Q. Again, Mr. Yoder, you understood it? ✓
- 24 A. Yes.
- 25 Q. Now, at that point you consciously again decided not to

1 waive any of those rights and not to talk, is that right?

2 A. Yes.

3 Q. Then you mentioned that you had a conversation with Mr.
4 Gray?

5 A. Yes.

6 Q. What did Mr. Gray say to you at that time, sir, about a
7 lawyer?

8 A. He told me the Magistrate would have to appoint one if I
9 could not afford one.

10 Q. By the way, you were aware that you had been arrested for
11 this bank robbery?

12 A. Yes, he told me that when he arrested me.

13 Q. Mr. Gray explained to you, did he not, at the office that
14 he was incapable of assigning an attorney for you?

15 A. Yes.

16 Q. That was something that would have to be done by the Magis-
17 trate?

18 A. Yes.

19 Q. Do you recall Mr. Gray telling you that the Magistrate's
20 decision would depend upon whether or not you were finan-
21 cially able to hire your own lawyer?

22 A. Yes.

23 Q. He explained to you that you would have to apply to the
24 Magistrate, and did he explain that you would have to fill
25 out a form?

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

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- 1 A. He didn't say nothing about a form.
- 2 Q. Did he explain that the Magistrate's decision would be
- 3 based upon how much money you had?
- 4 A. Yes.
- 5 Q. At least he explained that to you?
- 6 A. Yes.
- 7 Q. You realized at that point that you had to go to the
- 8 Magistrate's Office before you would get an attorney?
- 9 A. Yes.
- 10 Q. Then Mr. Gray told you that he would like to find the
- 11 money, is that right?
- 12 A. No, he didn't say it like that.
- 13 Q. He indicated to you somehow that his desire was to find
- 14 the money?
- 15 A. Yes.
- 16 Q. What did he say to you about the money?
- 17 A. I asked him how I could help myself -- you know -- let me
- 18 think for a minute --
- 19 Q. You asked Mr. Gray how you could help yourself?
- 20 A. Yes.
- 21 Q. Did Mr. Gray give you an answer?
- 22 A. Yes, he said I could turn in money.
- 23 Q. And you then said, sir, that you asked -- before you would
- 24 give any statement you asked Mr. Gray some questions, and
- 25 after you got certain answers, certain satisfactory answers.

1 it was then you decided to talk to him?

2 A. I didn't say I would talk to him then either, I told him
3 I would turn in money.

4 Q. You did ask him first how you could help yourself?

5 A. How I could help myself not to be in jail waiting for
6 trial?

7 Q. And you made sure that you asked those questions before you
8 gave any further information, is that right?

9 A. I didn't give any information.

10 Q. At that time?

11 A. At that time.

12 Q. What did Mr. Gray tell you?

13 A. He told me it would probably be easier for me if I turned
14 in money.

15 Q. Did Mr. Gray explain to you that it was not his decision,
16 but the Magistrate's decision?

17 A. Yes.

18 Q. Did Mr. Gray say that any cooperation you provided would
19 be brought to the attention of the prosecutors?

20 A. Yes.

21 Q. And they in turn would provide the Magistrate that infor-
22 mation?

23 A. Yes.

24 Q. That could be a factor in the Magistrate's decision to
25 release you?

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

1 A. Yes.

2 Q. And Mr. Gray, isn't it true, never told you that he was
3 releasing you or that he would release you?

4 A. No, he didn't say that.

5 Q. You were aware that it was the Magistrate's decision?

6 A. Yes.

7 Q. And with that in mind, I take it, sir, you did not want to
8 spend anytime in jail at that time?

9 A. Yes.

10 Q. And you agreed to provide Mr. Gray some information in
11 that respect?

12 A. Yes.

13 Q. Was it your understanding, sir, that he would bring it to
14 the attention of the prosecutors?

15 A. Yes.

16 Q. And that would be turned over to the Magistrate?

17 A. I was informed that would be his intention.

18 Q. In fact, Mr. Gray did bring it to the attention of the
19 prosecutors, and it was brought to the attention of the
20 Magistrate —

21 A. Yes.

22 Q. — at the time of your arraignment before him or appearance
23 before him?

24 A. Yes.

25 Q. Now, Mr. Yoder, at that point you decided to provide some

- 1 information to Mr. Gray --
- 2 A. Yes.
- 3 Q. -- obviously?
- 4 A. Yes.
- 5 Q. You did in fact take Mr. Gray out to where the money was?
- 6 A. Yes.
- 7 Q. And you also discussed with Mr. Gray some aspects of the
- 8 actual incident itself, did you not?
- 9 A. Not that I knew I was supplying him with information.
- 10 Q. Well, the question is you did talk to Mr. Gray about the
- 11 incident?
- 12 A. Yes.
- 13 Q. You did open your mouth and words came out --
- 14 A. Yes.
- 15 Q. -- about this particular bank robbery?
- 16 A. Yes.
- 17 Q. And that was after you had decided to talk to Mr. Gray
- 18 about the money?
- 19 A. Yes.
- 20 Q. Now, when you were at the Magistrate's Office, sir, do you
- 21 recall Mr. Maxwell telling you essentially the same thing,
- 22 that is, he could assign an attorney for you if you quali-
- 23 fied financially?
- 24 A. Yes.
- 25 Q. And he had you fill out a certain form?

Direct and cross-examination of Daniel Yoder
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- 1 A. Yes.
- 2 Q. And you did that, and he indicated that he would review it
3 and perhaps assign an attorney for you?
- 4 A. Yes.
- 5 Q. At that point you didn't know if you had an attorney assigned
6 or not?
- 7 A. Yes, I did.
- 8 Q. Did Mr. Maxwell tell you at that time?
- 9 A. He said he would have one assigned by the morning.
- 10 Q. And Mr. Maxwell subsequently did assign one for you?
- 11 A. Yes.
- 12 Q. Mr. Maxwell told you that in his courtroom?
- 13 A. Yes.
- 14 Q. It was following that that you went out with the FBI agents
15 to look for the money?
- 16 A. Yes.
- 17 Q. You went with Mr. Gray?
- 18 A. Yes.
- 19 Q. You showed Mr. Gray where the money was?
- 20 A. Yes.
- 21 Q. And is it correct there were two separate areas, one with
22 bills, one with coins?
- 23 A. Yes.
- 24 Q. Do you recall how long a car ride it was from the Magis-
25 trate's courtroom to where the money was?

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

1. Both places?
2. Q. Well, to the first, then to the second.
3. A. About an hour to the first, about forty-five minutes to the
4. second.
5. Q. During that car ride, the first one, did you have conver-
6. sation with Mr. Gray about the money?
7. A. Yes.
8. Q. You told him where it was?
9. A. Yes.
10. Q. Did you also have conversation with him about the incident, ✓
11. the bank robbery itself?
12. A. Yes.
13. Q. Then after you went to the first place and you found certain
14. money there, bills, you then went to the second place —
15. A. Yes.
16. Q. — to find the coins?
17. A. Yes.
18. Q. That was about forty-five minutes?
19. A. Yes.
20. Q. In that forty-five minutes did you also have a conversation
21. with Mr. Gray about the money?
22. A. Yes.
23. Q. About the robbery?
24. A. Yes.
25. Q. Then following that Mr. Gray dropped you off somewhere?

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

1 A. Yes.

2 Q. In that area?

3 A. Yes.

4 Q. And except for that, you had no further conversation with
5 him?

6 A. No.

7 MR. WAGNER: I have nothing else. Thank you, sir.

8

9 REDIRECT EXAMINATION BY MR. HARRINGTON:

10 Q. Mr. Yoder, while you were at the FBI headquarters did you
11 discuss with Thomas Gray anything about this incident,
12 other than where the money was located?

13 A. Yes.

14 Q. Did you give him any statement about your participation
15 or the participation of any other individuals in this
16 particular robbery at FBI headquarters?

17 A. No.

18 Q. So that the only time you ever discussed this matter with
19 him and gave information was after your arraignment?

20 A. Yes.

21 Q. And you say that you went to the arraignment with the
22 understanding that it would be helpful to you for bail
23 purposes if you told him where the money was?

24 A. Yes.

25 Q. Was this discussion initiated from Mr. Gray or from you?

Direct and cross-examination of Daniel Yoder
at Suppression Hearing.

- 1 A. I don't understand.
- 2 Q. How did the discussion concerning the helping of bail come J
3 about?
- 4 A. I asked him. ✓
- 5 Q. What did you ask him specifically?
- 6 A. I asked him what I could do to help me get bail, you know,
7 on my recognizance or something like that.
- 8 Q. What did he say, do you recall?
- 9 A. He told me it would help if I turned in the money, just
10 like that.
- 11 Q. Did he say anything else to you?
- 12 A. Not that I can recall. f
- 13 MR. HARRINGTON: I have no further questions.
- 14 MR. WAGNER: Nothing else, your Honor.
- 15
- 16 (Witness excused.)
- 17
- 18 THE COURT: We have come to a time unfortunately where I
19 can't go on longer. As you know, we are here
20 this late because of the circumstances involving
21 one automobile, and I have no choice but to
22 resume at some convenient hour tomorrow. I
23 guess tomorrow I am fairly flexible. I do
24 have something at four o'clock. I have time
25 during the day. I imagine it wouldn't take

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1 more than an hour, an hour and a half at the
2 most?
3 MR. MAHONEY: Yes. I prefer the afternoon, your Honor.
4 THE COURT: What about you, Mr. Lamantia, do you want to
5 be here?
6 MR. LAMANTIA: Yes, I am available.
7 THE COURT: Two o'clock, Mr. Harrington?
8 MR. HARRINGTON: Yes.
9 THE COURT: Mr. Wagner?
10 MR. WAGNER: That is fine.
11 THE COURT: We will resume at two o'clock tomorrow. I
12 guess it was the defendant Yoder who had the
13 problem with the automobile. Make sure you
14 get started early enough tomorrow so you can
15 anticipate any problem you might have, and
16 see if you can get in here at two o'clock.
17 MR. HARRINGTON: Judge, so that the Court is aware, the Yoders
18 didn't receive word of the earlier scheduled
19 time until shortly before they were supposed
20 to be here because of communication problems.
21 That is one of the reasons they were late.
22 THE COURT: Thank you.
23
24 (Thereupon the court was in recess at 6:15 P.M.)
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VOLUME IV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Cr. 76-174

BRIAN BUCHANAN, DANIEL YODER
& MICHAEL YODER,

Defendants.

Motion to suppress in the above entitled action held
before the HON. JOHN T. ELFIN, United States District Judge,
in and for the Western District of New York, at Buffalo, New
York, on January 19, 1977.

APPEARANCES:

RICHARD J. ARCABA,
United States Attorney, by
EDWARD J. WAGNER,
Ass't. United States Attorney,
Appearing on behalf of the Government.

STEPHEN LAMANTIA, ESQ.,
Appearing on behalf of the defendant
Brian Buchanan.

JAMES P. HARRINGTON, ESQ.,
Appearing on behalf of the defendant
Daniel Yoder.

MARK MAHONEY, ESQ.,
Appearing on behalf of the defendant
Michael Yoder.

* * * * *

H. T. Noel & E. F. Knisley

1 PROCEEDINGS RESUMED, PURSUANT TO ADJOURNMENT, COMMENCING AT
2 2 P.M.

3
4 (Defendants present, counsel present.)
5

6 THE COURT: All right. Now, we have the continuation of
7 the suppression hearing in United States
8 versus Buchanan. We had proceeded to the
9 point where you had some evidence you wanted
10 to put on, Mr. Mahoney?

11 MR. MAHONEY: That is correct, your Honor.

12 THE COURT: We are ready to proceed.

13 MR. MAHONEY: I call Michael Yoder to the stand.
14

15 MICHAEL ROMAN YODER, 27 Mill Street, Delavan,
16 New York, called as a witness in his own behalf, and being
17 first duly sworn, testified as follows:
18

19 DIRECT EXAMINATION BY MR. MAHONEY:

20 Q. Mr. Yoder, did there come a time in November of 1976 that
21 you talked to agent of the FBI?

22 A. Yes.

23 Q. And by what means did you talk with him?

24 A. Over the phone.

25 Q. Who was it that you talked with?

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 A. Special Agent Thomas Gray.
- 2 Q. Would you describe the substance of that conversation?
- 3 A. Well, I called the FBI Office and asked for whoever was in
- 4 charge of the investigation of the Strykersville bank
- 5 robbery, and I told them that I heard they wanted to talk
- 6 to me, and they gave me Thomas Gray.
- 7 Q. What occurred?
- 8 A. Well, I asked him if he was looking for me, and he said
- 9 yes, and I told him I would come in and talk to him.
- 10 Q. All right. Was anything else said at that time?
- 11 A. Well, it was said there was no warrant out for my arrest,
- 12 and that I didn't have to come in and talk to him.
- 13 Q. All right. So what did you do?
- 14 A. I agreed to come in the next day.
- 15 Q. All right. And when you appeared the next day that was —
- 16 well, the next day or was it — do you remember exactly
- 17 what date the telephone call was on?
- 18 A. The call was on the 9th.
- 19 Q. When was it that you appeared at the FBI Office?
- 20 A. On the 11th.
- 21 Q. It wasn't the next day, it was the day after?
- 22 A. Right.
- 23 Q. And what occurred? Do you recall what time it was that
- 24 you showed up there?
- 25 A. It was one o'clock.

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

1 Q. What occurred?

2 A. Special Agent Gray came out to meet me, introduced himself.
3 and took me to the interrogation room.

4 Q. What happened then?

5 A. There another agent, Special Agent John Poerstal, met with
6 us there and both of them showed their identification, and
7 they told me they had enough evidence to convict me of
8 robbing the Strykersville bank.

9 Q. What else did they say in that regard?

10 A. They said that another person had already confessed, I
11 was implicated.

12 Q. Did they say who the person was?

13 A. Yes.

14 Q. Who was that?

15 A. Brian Buchanan.

16 Q. They also said you were implicated?

17 A. Yes.

18 Q. All right. What else did they say to you?

19 A. Well, they gave me their version of how the bank robbery
20 had went, what my part was in it.

21 Q. All right. A detailed rundown to you of what they thought
22 occurred?

23 A. There was quite a few details in it.

24 Q. Then after they did that what occurred?

25 A. Well, they showed me a form, Interrogation and Advice of

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

1 Rights form.

2 Q. Look at Government's Exhibit 7, is that the form?

3 A. Yes, it is.

4 Q. Okay. What, if anything, occurred with respect to that
5 form?

6 A. Well, Special Agent Gray read it to me, and handed it to
7 me and asked me to read it.

8 Q. When he read it, he read it out loud to you?

9 A. Yes.

10 Q. The whole thing?

11 A. Yes.

12 Q. All right. Then did you read it?

13 A. Yes, I did.

14 Q. Then what happened?

15 A. I read this thing about a lawyer here. I asked about
16 getting a lawyer.

17 Q. And what happened?

18 A. Well, Special Agent Gray told me that there was no way I
19 could have a lawyer until I either made a statement or
20 was formally charged with a crime.

21 Q. Okay. Had you done either, had either thing occurred at
22 that time?

23 A. No.

24 Q. All right. So what happened then?

25 A. Well, we talked about it for awhile.

1 Q. When you say that, what exactly occurred?

2 A. Well, I wanted to make sure, you know, that I couldn't get
3 a lawyer, because that is what I wanted was a lawyer,
4 because they had told me they had enough to convict me,
5 and we bartered over it for a couple of minutes, and they
6 said there was no way I could get one.

7 Q. Okay. So then what did you do?

8 A. I signed this here piece of paper.

9 Q. Okay. Why exactly did you sign that?

10 A. They had asked me if I understood it, I said yes, and I
11 figured they had to have it to interrogate me.

12 Q. Okay. You wanted to get interrogated. Why did you want
13 to do that?

14 A. I figured it was the only way to get a lawyer.

15 Q. Okay. Now, then what occurred after you signed the state-
16 ment?

17 A. Well, Special Agent Gray again told me how he thought the
18 bank robbery went, and, you know, he told me -- he asked
19 me is that how it went, and I would say yes or no, whatever.

20 Q. Well, okay. You say he would tell you, you mean he would
21 say a few --

22 MR. WAGNER: I ask the witness just testify, your Honor.

23 THE COURT: Pardon?

24 MR. WAGNER: I will ask that the attorney not lead in this
25 area.

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at Suppression Hearing.

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1 THE COURT: Yes, sustained.

2 BY MR. MAHONEY:

3 Q. Were there -- he put statements to you in the form of
4 questions, and how did he do this?

5 A. He told me how it went, how he had it and, and he
6 told me he was going to write it down and have it
7 typed up for me to sign.

8 Q. Okay. Then did there occur that interlude -- well, then
9 he did what you just said he did?

10 A. Yes. He had a stenographer take it down as he repeated
11 the story to her.

12 Q. And did you speak at all at that time?

13 A. No.

14 Q. Then what was the next thing that occurred?

15 A. He had the stenographer type it up and bring it back, and
16 asked me if I wanted to make any corrections.

17 Q. Were there some corrections made?

18 A. I believe there was one or two.

19 Q. Then what happened?

20 A. Well, he asked me if I wanted to sign it. I said yes, and
21 signed it.

22 Q. Okay. Why did you sign it?

23 A. Because then I figured I would be eligible for a lawyer.

24 Q. Okay. So what was the next thing that happened on that
25 day?

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 A. Well, then he asked me about did I have any money from the
2 bank robbery, and would I take them to it.
- 3 Q. What did you say?
- 4 A. I told them no, I couldn't take them to it because --
- 5 Q. Well, you said no, right?
- 6 A. Right.
- 7 Q. So then what happened?
- 8 A. Well, they asked me would I bring it in if I couldn't take
9 them to it. I told them yes, I would bring it in the next
10 day, and I never did.
- 11 Q. Okay. On the next day, in any event?
- 12 A. On the next day, no.
- 13 Q. Did you intend -- at the time you told them you would come
14 on the next day with the money, did you intend to come
15 in the next day?
- 16 A. I really wasn't sure.
- 17 Q. Okay. Then what occurred?
- 18 A. Well, I asked them about a lawyer, they said, "What about
19 the money," they would direct me to someone, and they said
20 that I was free to go, they would see me tomorrow.
- 21 Q. All right. Then they said you were free to go, was that
22 what you expected to occur?
- 23 A. No.
- 24 Q. What had you expected to occur?
- 25 A. I figured they would arrest me.

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1 Q. All right. And you have heard the agent testify previously
2 that at least as to some of the individuals interrogated
3 he indicated they were free to go, was there any such
4 indication made to you?

5 A. Just after I told them that I would bring the money in.

6 Q. At the point when you asked about an attorney in connection
7 with the waiver of rights form, at that point did anybody
8 tell you that you were free to go?

9 A. No. They didn't tell me I had to stay, but they didn't
10 tell me I could go.

11 Q. What was your understanding of what was going to happen
12 to you on that day as you walked into the FBI Office?

13 A. I came to get everything straightened out.

14 Q. All right.

15 A. I wasn't sure what was going to happen to me.

16 Q. Okay. What was the next time you saw any agents of the
17 FBI?

18 A. On the 13th.

19 Q. All right. And did you have any conversation with FBI
20 agents on that day?

21 A. Yes.

22 Q. What was the first occasion for that on that day?

23 A. I went into the FBI, into the FBI Office, and Special Agent
24 Langer took me into an interrogation room and he read me
25 my rights.

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 Q. And what occurred then?
- 2 A. Then he asked me if I wanted to make a statement, and I
- 3 said no, and he said, "Well, we are going to fingerprint
- 4 you and take your picture."
- 5 Q. All right. And then what occurred also?
- 6 A. Well, I went and got fingerprinted and a mug shot, and then
- 7 Special Agent Gray asked me if I would take him to the
- 8 money or tell me where it was at.
- 9 Q. All right. What did you say?
- 10 A. Well, I told him where it was at.
- 11 Q. All right. Was that — was there talk of your arraignment
- 12 on that day?
- 13 A. Yes, they said that we would go get it after the arraignment.
- 14
- 15 Q. The getting of the money was spoken of in relation to
- 16 when you were going to get arraigned, after you got arraigned
- 17 you were going to get the money?
- 18 A. Yes, after I got arraigned.
- 19 Q. All right. And is that what occurred after the arraignment?
- 20 A. Yes, it is.
- 21 Q. All right. Did subsequent — you mentioned they gave you
- 22 your rights when you first appeared at the FBI Office
- 23 that day, do you recall what time that was?
- 24 A. No, I don't. I believe it was somewhere about one thirty
- 25

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1 Q. And at any time subsequent to that on that day did anybody
2 again advise you of your rights?

3 A. No.

4 Q. Apart from the Magistrate?

5 THE COURT: Were you before the Magistrate on that day?

6 THE WITNESS: Yes, the Magistrate did.

7 BY MR. MAHCNEY:

8 Q. Look at Government's Exhibit 12(b), is that the Advice of
9 Rights form that was given to you on that day?

10 A. Yes, the one by Special Agent Langer.

11 Q. All right. Who else signed that?

12 A. Myself and Special Agent Patrick.

13 Q. What time was that?

14 A. Three thirty.

15 Q. In connection with going to get the money, was anything
16 else said to you beside you would get the money after you
17 appeared before the Magistrate?

18 A. Just that if I cooperated it probably would be better for
19 me.

20 Q. Who said that and where?

21 A. That was Special Agent Gray on that day at the Federal
22 Building.

23 Q. Who else was present?

24 A. I don't know, there was various agents around and state
25 police, I remember that. I don't remember the names of

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 them all.
- 2 Q. Did they say -- did he say specifically in what way it
- 3 would go better for you?
- 4 A. He said he would tell the district attorney and the Magis-
- 5 trate I cooperated.
- 6 Q. All right. When you were arraigned before the Magistrate
- 7 and when bail was set, was mention made of this?
- 8 A. Yes, it was.
- 9 Q. By whom?
- 10 A. I believe by Mr. Wagner.
- 11 MR. MAHONEY: That is all.

12

13 CROSS EXAMINATION BY MR. WAGNER:

- 14 Q. Mr. Yoder, sir, when you called Mr. Gray -- that was on
- 15 November 9th?
- 16 A. Yes.
- 17 Q. At that time, sir, it is true that you knew from some
- 18 source or from some sources that the FBI was looking for
- 19 you in connection with that robbery?
- 20 A. Yes, I heard they wanted to talk to me.
- 21 Q. Who had you heard that from?

22 MR. MAHONEY: Objection, entirely irrevelant, your Honor.

23 Not covered on direct.

24 THE COURT: Yes, I don't see the relevance.

25 BY MR. WAGNER:

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

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- 1 Q. Had you heard that from more than one person?
- 2 MR. MAHONEY: Objection, your Honor.
- 3 THE COURT: I will allow the answer to that, without naming
4 the persons.
- 5 THE WITNESS: No.
- 6 BY MR. WAGNER:
- 7 Q. One person had told you that you were wanted by the FBI
8 for questioning at least, is that right?
- 9 A. Yes.
- 10 Q. And you knew at that time, sir, did you not, that the FBI
11 had reason to think you were a suspect in the case, that
12 is why they wanted to talk to you?
- 13 MR. MAHONEY: Objection, your Honor.
- 14 THE COURT: Overruled.
- 15 MR. MAHONEY: It is incompetent whether the FBI had reason.
- 16 THE WITNESS: I didn't know.
- 17 THE COURT: It is what he understood, not what the FBI --
- 18 MR. MAHONEY: The question was, I believe, did he know that
19 the FBI had reason.
- 20 THE COURT: I will allow the answer.
- 21 THE WITNESS: No, I didn't know.
- 22 THE COURT: It was a little inarticulate, but you under-
23 stood the question?
- 24 THE WITNESS: Yes.
- 25 THE COURT: The answer is no.

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

1 BY MR. WAGNER:

2 Q. Didn't you know, Mr. Yoder, that they were looking for you
3 to talk to you as a participant, rather than let's say a
4 witness?

5 A. All I knew was they wanted to talk to me about it.

6 Q. You knew they were interested in you because they thought
7 you might have done it, right?

8 A. I suspected that.

9 Q. That was what was in your mind at the time anyway, right?

10 A. Yes.

11 Q. And with that in mind, can you tell me about how long it
12 was before you called Mr. Gray that you first heard from
13 anyone about this?

14 MR. MAHONEY: Objection, your Honor.

15 THE COURT: Sustained.

16 BY MR. WAGNER:

17 Q. When had you returned from Florida, sir?

18 MR. MAHONEY: Objection. First of all there has been no
19 mention of Florida.

20 THE COURT: Sustained.

21 BY MR. WAGNER:

22 Q. Had you been in Florida before this, sir?

23 MR. MAHONEY: Objection.

24 THE COURT: Overruled.

25 YOUR WITNESS: Yes I had been in Florida several times.

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

1 BY MR. WAGNER:

2 Q. Had you been in Florida within a few weeks of your call
3 to Mr. Gray?

4 MR. MAHONEY: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: Yes.

7 BY MR. WAGNER:

8 Q. And do you recall when you returned from Florida to the
9 Buffalo area?

10 MR. MAHONEY: Objection, your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: No the exact date, no.

13 BY MR. WAGNER:

14 Q. Well, approximately how long, approximately when, sir?

15 A. On or about the 5th.

16 Q. It was a few days before you called Mr. Gray?

17 A. Yes, it was.

18 Q. Was it after getting back to the Buffalo area from Florida
19 that you learned the FBI was looking for you?

20 MR. MAHONEY: Objection.

21 THE COURT: Sustained.

22 BY MR. WAGNER:

23 Q. Can you tell us, sir, when it was that you learned that
24 the FBI was interested in talking to you?

25 MR. MAHONEY: Objection, your Honor.

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 THE COURT: Sustained.
- 2 BY MR. WAGNER:
- 3 Q. Mr. Yoder, when you called Mr. Gray you knew that the FBI
- 4 was looking for you at that point?
- 5 A. Yes.
- 6 Q. And your reason for calling them, as you said before, was
- 7 that you wanted to get everything straightened out?
- 8 A. Yes.
- 9 Q. And you were referring to "everything" meaning this incident
- 10 at the Strykersville bank?
- 11 A. I was referring to whatever they were looking for me for.
- 12 Q. You knew they were looking for you in connection with the
- 13 Strykersville bank?
- 14 A. Yes, I heard that.
- 15 Q. When you called Mr. Gray do you recall, sir, what you said
- 16 to him at the time?
- 17 A. Yes, I said, "I hear that you are interested in talking to
- 18 me about the Strykersville bank robbery."
- 19 Q. And he told you he was?
- 20 A. Yes.
- 21 Q. What else did you say to him?
- 22 A. I told him that I would come in and talk to him about it.
- 23 Q. Did Mr. Gray tell you on the telephone, sir, that he did
- 24 not have a warrant?
- 25 A. Yes, he did.

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 Q. And he told you that he could not arrest you at that time?
- 2 A. Yes, he did.
- 3 Q. And you told him you wanted to talk to him?
- 4 A. I told him I would come in and talk to him. He said he
- 5 would appreciate it if I did.
- 6 Q. Did you set a time with Mr. Gray, a specific time?
- 7 A. I believe I did, I don't remember it though specifically.
- 8 Q. You and Mr. Gray worked out a time that was convenient for
- 9 the two of you, is that right?
- 10 A. Yes.
- 11 Q. Would that be fair to say?
- 12 A. Yes.
- 13 Q. Did Mr. Gray tell you where to come?
- 14 A. Yes, he did.
- 15 Q. He gave you directions?
- 16 A. He just said the Federal Building.
- 17 Q. Did you know where the Federal Building was?
- 18 A. Yes, I did.
- 19 Q. Do you recall, sir, if when you went in on the 11th that
- 20 was the time that you and Mr. Gray had agreed on?
- 21 A. No, it wasn't.
- 22 Q. What was the time that you had agreed on?
- 23 A. We had agreed on the 10th.
- 24 Q. You didn't go in until the 11th?
- 25 A. Right.

- 1 Q. When you went in to see -- strike that. Did you talk to
2 Mr. Gray on the telephone again before you went into see
3 him on the 11th?
- 4 A. I believe I called him on the 10th and told him I couldn't
5 make it.
- 6 Q. What did you say to him at that time?
- 7 A. I told him that I didn't have a car and the weather was
8 bad.
- 9 Q. What did Mr. Gray say?
- 10 A. He agreed that I come in the next day.
- 11 Q. There were no problems setting up another appointment?
- 12 A. No.
- 13 Q. On the 11th you went in?
- 14 A. Yes.
- 15 Q. Do you recall what time of day you got into the office?
- 16 A. About one o'clock.
- 17 Q. Were you alone or with someone else?
- 18 A. I had someone --
- 19 MR. MAHONEY: Objection.
- 20 THE COURT: Overruled, he already mentioned "us."
- 21 BY MR. WAGNER:
- 22 Q. You were with other people?
- 23 A. Yes, I was.
- 24 Q. Were they police officers?
- 25 A. No, they were not.

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

1 Q. Friends of yours?

2 A. Yes.

3 MR. MAHONEY: Objection.

4 THE COURT: Overruled.

5 BY MR. WAGNER:

6 Q. They were friends of yours?

7 A. Yes.

8 Q. They went up into the office with you or did they wait in
9 the car?

10 MR. MAHONEY: Objection.

11 THE COURT: Overruled.

12 THE WITNESS: One of them went up to the office with me.

13 BY MR. WAGNER:

14 Q. There were more than one?

15 A. Yes.

16 MR. MAHONEY: Objection.

17 THE COURT: Overruled.

18 BY MR. WAGNER:

19 Q. I'm sorry, I didn't hear your answer.

20 A. Yes.

21 Q. Where did the others go, if you know?

22 A. Shopping or somewhere.

23 MR. MAHONEY: Objection.

24 THE COURT: Obviously he can't know where they went.

25 BY MR. WAGNER:

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 Q. When you went into the FBI Office you told the receptionist
2 you wanted to speak to Mr. Gray?
- 3 A. Yes.
- 4 Q. You mentioned that you were escorted into an interview
5 room with Mr. Gray?
- 6 A. Yes.
- 7 Q. At that time you knew there was no warrant out for your
8 arrest, that was the best understanding you had?
- 9 A. Yes, I knew it.
- 10 Q. You mentioned Mr. Gray advised you of your rights, and I
11 will show you again Government's Exhibit 7, and you recog-
12 nize that as your signature?
- 13 A. Yes, I do.
- 14 Q. Do you recall that as being the form that Mr. Gray read
15 to you?
- 16 A. Yes.
- 17 Q. You recall that being the same form that you read, is that
18 right?
- 19 A. Yes.
- 20 Q. Did Mr. Gray read the whole form to you, if you know?
- 21 A. I don't remember if he read every word.
- 22 Q. When you saw it and read it yourself did you read every
23 word?
- 24 A. Yes, I did.
- 25 Q. Did you understand it?

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

1 A. Yes, I did.

2 Q. After Mr. Gray read that to you, you said there was a
3 discussion, sir, about an attorney or lawyer?

4 A. Yes.

5 Q. And that discussion was by you, and you mentioned something
6 about a desire for an attorney, is that right --

7 A. Yes.

8 Q. -- according to your version?

9 A. Yes.

10 Q. Mr. Gray told you at that time that he could not appoint
11 an attorney for you because you were not formally charged?

12 A. He told me there was no way I could get an attorney appointed
13 to me.

14 Q. Did he tell you the FBI could not assign attorneys?

15 A. I don't recall.

16 Q. Did he tell you the FBI could assign attorneys?

17 A. No.

18 Q. Did Mr. Gray -- do you remember him telling you, sir, that
19 because he could not assign an attorney for you, you might
20 as well leave at that point unless you wanted to talk to
21 him?

22 A. I don't recall.

23 Q. In any event, Mr. Gray did not assign an attorney for you?

24 A. No, he didn't. He told me what I would have to do to get
25 ons.

- 1 Q. What did he say to you, if you recall?
- 2 A. He said I would have to make a statement or be formally
- 3 charged.
- 4 Q. Mr. Gray told you that other than that he could not assign
- 5 an attorney for you, correct?
- 6 A. Correct.
- 7 Q. In fact, he did not assign an attorney for you at that
- 8 time?
- 9 A. No, he didn't.
- 10 Q. You had no attorney with you?
- 11 A. No.
- 12 Q. You realized that?
- 13 A. Yes.
- 14 Q. There was no one there pretending to be an attorney?
- 15 A. No.
- 16 Q. Following that, didn't he tell you that you could leave
- 17 the room if you wanted to at that point?
- 18 A. No.
- 19 Q. Did he tell you that you had to stay?
- 20 A. No.
- 21 Q. In fact, you knew you could leave the room at that point,
- 22 did you not?
- 23 A. I didn't, no.
- 24 Q. Well, you had no reason to think that you could not,
- 25 correct?

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

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1 Q. He didn't say I was under arrest or anything.

2 Q. In fact you knew you were not?

3 A. Yes.

4 Q. As far as you knew, you could walk out on your own free
5 will, you were not handcuffed?

6 A. I wasn't handcuffed.

7 Q. You weren't locked in the room?

8 A. No, I wasn't locked in the room.

9 Q. You were not told you had to stay?

10 A. No.

11 Q. Now, after Mr. Gray told you that he could not give you
12 an attorney, you continued to talk to him, is that right?

13 A. Yes.

14 Q. You gave him a statement, an oral statement, is that right?

15 A. Well, he actually made the statement.

16 Q. Mr. Gray told you what he presumed the events were, and
17 you either affirmed or denied it?

18 A. Yes.

19 Q. You went through that, and Mr. Gray as a result of this
20 conversation decided that he would prepare a written
21 statement, is that right?

22 A. Yes.

23 MR. MAHCNEY: Objection.

24 THE COURT: Overruled.

25 BY MR. WAGNER:

1 Q. In fact, Mr. Yoder, a stenographer was brought into the
2 office?

3 A. Yes.

4 Q. Mr. Gray dictated a written statement to her, did he not?

5 A. Yes, he did.

6 Q. You were present at that time?

7 A. Yes.

8 Q. Now, when the statement was given to the stenographer, was
9 it accurate, as far as what you and Mr. Gray had discussed
10 earlier?

11 A. It was what he told her.

12 Q. She came back a few minutes later and had a written state-
13 ment there?

14 A. Yes, it was typed out.

15 Q. Do you recall, sir, also at that time a second written
16 statement being prepared?

17 A. Yes.

18 Q. Can you tell us the circumstances under which that was
19 prepared, as best you recall?

20 A. I don't recall the circumstances leading up to it.

21 Q. It was prepared after the first statement was dictated
22 to the stenographer?

23 A. Yes.

24 Q. Was it prepared after you had signed the typewritten state-
25 ment or before you signed it?

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 A. I don't recall.
- 2 Q. I will show you what has been marked Government's Exhibit
- 3 S, and I will ask you if you recognize that as the typewritten
- 4 statement prepared by the stenographer?
- 5 A. Yes.
- 6 Q. On the first page of that there's some initials at the
- 7 beginning of a paragraph and at the end of the very last
- 8 part of the page there, are those yours?
- 9 A. Yes.
- 10 Q. Mr. Gray asked you to read that over and put your initials
- 11 on there?
- 12 A. Yes.
- 13 Q. On the second page, the initials at the very beginning and
- 14 end, again Mr. Gray asked you to put your initials there,
- 15 is that right?
- 16 A. Yes, he did.
- 17 Q. On Page 2, sir, in the middle of the page approximately,
- 18 there's some handwriting there with the initials MY, is
- 19 that your handwriting?
- 20 A. No.
- 21 Q. Whose is that?
- 22 A. That is Special Agent Gray's, I believe.
- 23 Q. Mr. Gray put that in there at your request?
- 24 A. Yes, he did.
- 25 Q. That was because you felt that the addition was a better

1 statement than what had been typed?

2 A. Yes.

3 Q. Then after Mr. Gray wrote that in in his own handwriting
4 he had you initial it?

5 A. Yes.

6 Q. As far as you could tell, that was more accurate, is that
7 correct?

8 A. Yes.

9 Q. That is why it had been changed?

10 A. Yes.

11 Q. On the third page, again at the beginning of the paragraph
12 there's the initials MY, and at the end of the typewriting
13 there's MY, those are your initials?

14 A. Yes.

15 Q. Again Mr. Gray asked you to read it and if it was correct
16 to initial it?

17 A. Yes.

18 Q. Following the typewritten portion there is a handwritten
19 segment, how did that get there?

20 A. Tom Gray asked me to write it there.

21 Q. Did you write it there yourself?

22 A. Yes, I did.

23 Q. Was it true and accurate when you wrote it?

24 A. HONORARY: Objection, your Honor. I don't know what the
25 relevancy is, your Honor.

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

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1 MR. WAGNER: The relevancy is so obvious.

2 R. MAHONEY: I don't think it is.

3 MR. WAGNER: It is the man's written statement, he --

4 THE COURT: I will allow the answer.

5 BY MR. WAGNER:

6 Q. Was that accurate and true at the time you wrote it out?

7 A. Yes. To the best of my knowledge, yes.

8 Q. It was an honest statement by you?

9 A. Yes.

10 THE COURT: This is at the end of Government's Exhibit 8?

11 MR. WAGNER: Yes, at the bottom of the third page, your

12 Honor, in Mr. Yoder's handwriting.

13 BY MR. WAGNER:

14 Q. Now, Mr. Yoder, there was a second statement, a second
15 written statement, and I show you what has been marked
16 Government's Exhibit 9, and I will ask you if that is the
second written statement you mentioned earlier?

18 A. Yes.

19 Q. Again, sir, at the beginning of it there are the initials
20 MY, are those your initials?

21 A. Yes.

22 Q. And near the end of the text of the statement there are
23 the initials MY, again your initials?

24 A. Yes.

25 Q. And again, Mr. Gray asked you to read that over and put

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 your initials there if it was accurate, is that correct?
- 2 A. Yes.
- 3 Q. And it was accurate, is that right?
- 4 A. Yes.
- 5 Q. Then there's a second, actually the third paragraph of
- 6 that is a separate paragraph and it starts out, "I have
- 7 read," and it is signed Michael Yoder, is that your
- 8 writing and your signature, sir?
- 9 A. Yes, it is.
- 10 Q. You put that on there?
- 11 A. Yes, I did.
- 12 Q. And the date?
- 13 A. Yes.
- 14 Q. And Mr. Gray witnessed it, is that right?
- 15 A. Yes.
- 16 Q. Mr. Yoder, sir, after the statements were prepared, these
- 17 two written statements that you have been looking at, Mr.
- 18 Gray asked you, did he not, or expressed an interest to you
- 19 in finding the money, is that right?
- 20 A. Yes, he did.
- 21 Q. And at that time you told him -- u refused -- I believe you
- 22 said you refused -- to take him to the money?
- 23 A. That is right.
- 24 Q. Is it correct that you did tell Mr. Gray you would return
- 25 the next day with the money for him?

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 A. Yes, I did.
- 2 Q. And Mr. Gray consented to that, did he not?
- 3 A. Yes.
- 4 Q. He told you there was nothing further he would do with
- 5 you at that time, is that right?
- 6 A. Yes.
- 7 Q. Do you recall if you set up a specific time to return the
- 8 next day?
- 9 A. I believe we did, but I don't remember the time.
- 10 Q. In any event, at that point on the 11th your conversation
- 11 with Mr. Gray was essentially over, is that right?
- 12 A. Yes.
- 13 Q. And you left the office?
- 14 A. Yes, I did.
- 15 Q. Did you say anything else to Mr. Gray or did he say any-
- 16 thing else to you at that time, if you can recall?
- 17 A. No, I don't recall.
- 18 Q. Now, you told Mr. Gray, sir, at the office that you would
- 19 bring the money into him the next day and you did not, is
- 20 that correct?
- 21 A. That is correct.
- 22 Q. Did you call Mr. Gray the next day?
- 23 A. I don't remember.
- 24 Q. Did you see him the next day?
- 25 A. No, I didn't see him.

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 Q. You never, in fact, during the time of your arrest saw Mr.
2 Gray again, is that right?
- 3 A. That is correct.
- 4 Q. Now, in the meantime, Mr. Yoder, you were free on your own,
5 is that correct?
- 6 A. Yes.
- 7 Q. That is, you were not arrested?
- 8 A. No.
- 9 Q. You were not visited by any other agents that you recall?
- 10 A. No.
- 11 Q. Then there came a time that you heard that you had been
12 indicted?
- 13 A. Yes.
- 14 Q. How did you hear that, if you recall?
- 15 A. It was on the news.
- 16 Q. And you heard your name mentioned?
- 17 A. Yes, I did.
- 18 Q. What did you do when you heard that?
- 19 A. No.
- 20 Q. Well, there came a time you went to the FBI Office?
- 21 A. Yes, the next day.
- 22 Q. That was because you heard you had been charged with a
23 crime?
- 24 A. Yes.
- 25 Q. You knew that the FBI wanted to see you?

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 A. I didn't know, but I figured.
- 2 Q. You presumed they did because you had been charged?
- 3 A. Yes.
- 4 Q. You presumed it was Mr. Gray that was interested in you?
- 5 A. Yes.
- 6 Q. The next day you went to the FBI Office?
- 7 A. Yes, I did.
- 8 Q. You went there by yourself?
- 9 A. Yes.
- 10 Q. Had you talked to any agent immediately prior to going
- 11 there, let's say within a day or two before that?
- 12 A. No.
- 13 Q. You went there on your own?
- 14 A. Yes.
- 15 Q. Did you go alone or with other people?
- 16 A. I had someone drive me in.
- 17 Q. Where did that person stay when you went into the office,
- 18 if you recall?
- 19 A. I imagine they went home.
- 20 Q. You just were dropped off there?
- 21 A. Yes.
- 22 Q. When you got to the FBI Office you took the elevator up
- 23 and you went to the receptionist and asked for Mr. Gray?
- 24 A. I don't recall if I asked for Mr. Gray. I said, "My name
- 25 is Michael Yoder, I believe there is someone here that

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 "What is the date?"
- 2 Q. Shortly after that someone came out to see you?
- 3 A. Yes.
- 4 Q. Is that to your purpose in going was related to this bank
- 5 robbery charge?
- 6 A. Yes.
- 7 Q. Now, you again went into the FBI Office and you were again
- 8 advised of your rights before any questioning took place,
- 9 is that right?
- 10 A. Yes.
- 11 Q. And was it, if you recall, sir, the same advice that you
- 12 had received before?
- 13 A. I believe it was the same form, yes.
- 14 Q. Was the form read to you again?
- 15 A. Yes, it was.
- 16 Q. Again it was given to you?
- 17 A. Yes.
- 18 Q. And you read it again yourself?
- 19 A. Yes.
- 20 Q. And you looked at Exhibit 12(b), that is the form that
- 21 was read to you and which you read on the 10th of November?
- 22 A. Yes.
- 23 Q. And you signed it, is that right, sir?
- 24 A. Yes, I did.
- 25 Q. Do you recall if the whole form was read to you?

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

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- 1 A. I don't recall if it was all read to me word by word.
- 2 Q. As far as you could tell, it had been all read to you?
- 3 A. As far as I could tell.
- 4 Q. When you read it, did you read the entire form yourself?
- 5 A. Yes.
- 6 Q. Did you understand it?
- 7 A. Yes.
- 8 Q. When you signed it, you signed it voluntarily?
- 9 A. Yes.
- 10 Q. At that point you were asked if you wanted to give a
- 11 statement?
- 12 A. Yes.
- 13 Q. Do you recall who asked you that?
- 14 A. I believe Special Agent Langer.
- 15 Q. What did you say at that point?
- 16 A. I said no, I didn't want to make a statement.
- 17 Q. That was your conscious decision, not to make a statement
- 18 at that time?
- 19 A. Yes.
- 20 Q. Then Mr. Langer didn't ask you anything else, did he,
- 21 about the events of the robbery?
- 22 A. Not that I recall.
- 23 Q. There was some fingerprinting and photographing which
- 24 took place?
- 25 A. Yes.

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 Q. Now, you were at that time, sir, your brother there, Mr.
2 Michael Yoder?
- 3 A. YES, SIR: Objection.
- 4 THE COURT: Overruled.
- 5 THE WITNESS: As I passed through the room to the finger-
6 printing room, yes, I saw him.
- 7 BY MR. WAGNER:
- 8 Q. You had heard his name on the radio also?
- 9 A. On the television, yes.
- 10 Q. You heard Mr. Suchanan's name on the television?
- 11 A. Yes.
- 12 Q. There came a time, sir, after you were fingerprinted and
13 photographed that you saw Mr. Gray again, is that right?
- 14 A. Yes.
- 15 Q. Did Mr. Gray readvise you of those rights again?
- 16 A. I don't believe so.
- 17 Q. What did Mr. Gray say to you?
- 18 A. He told me he was interested in getting some money.
- 19 Q. At that point or sometime after that you told him you
20 would take him to the money, is that right?
- 21 A. Yes.
- 22 Q. Did you ask Mr. Gray for a lawyer at that time, sir?
- 23 A. I don't recall.
- 24 Q. In any event, Mr. Gray told you that he would like to find
25 the money, and you said you would take him to it?

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 Q. Yes.
- 2 Q. Did Mr. Gray also explain to you at that time that you
- 3 would have to make an appearance before the United States
- 4 Magistrate in this building?
- 5 A. Yes, he did.
- 6 Q. He explained to you that bail would be set by the Magistrate?
- 7 A. I believe he did mention that.
- 8 Q. Were you aware at that time that before the Magistrate
- 9 you would either be released or you would be forced to
- 10 spend sometime in jail?
- 11 A. Yes, I knew that.
- 12 Q. You knew that. Mr. Gray told you that if you would help
- 13 him find the money he would bring it to the attention of
- 14 the Assistant United States Attorney, who would bring it
- 15 to the attention of the Magistrate, and there was a chance
- 16 that you would be released on bail if that happened, is
- 17 that right?
- 18 A. I don't know if he said I would be released on bail.
- 19 Q. What did he say to you?
- 20 A. He said that he would bring it to their attention that
- 21 I cooperated.
- 22 Q. Mr. Gray didn't tell you what the consequences would be
- 23 then?
- 24 A. No.
- 25 Q. He told you he would bring it to the attention of the

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

- 1 Magistrate?
- 2 A. Yes.
- 3 Q. In fact, the Magistrate was made aware of that, isn't
- 4 that correct?
- 5 A. Yes, he was.
- 6 Q. When you appeared before the Magistrate do you recall, sir,
- 7 that you were again readvised essentially of those same
- 8 rights that you had read and had read to you before?
- 9 A. Yes.
- 10 Q. Following that you met with Mr. Gray again, is that right?
- 11 A. I believe I seen him in the hallway.
- 12 Q. Did you see another agent there, too?
- 13 A. There was several agents there.
- 14 Q. Do you recall Mr. Heiner being there, who testified in
- 15 here?
- 16 A. No, I don't recall him being in the hallway.
- 17 Q. At some point after your appearance before the Magistrate,
- 18 and after you were released on bail, you escorted an FBI
- 19 agent to some area where the money was located?
- 20 A. Yes.
- 21 Q. You recall who that agent was?
- 22 A. Special Agent Heiner.
- 23 Q. You went with Mr. Heiner to show him where the money was?
- 24 A. Yes, I did.
- 25 Q. When you found the money you prepared a -- Mr. Heiner

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

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1 prepared a written inventory of it?

2 A. Yes.

3 Q. You saw that?

4 A. Yes.

5 Q. Did you sign it, sir?

6 A. Yes.

7 Q. Showing you what has been marked Government's Exhibit 15,
8 which is a photocopy, I would like you to tell us, sir,
9 if you can, if that is a copy of your signature?

10 A. Yes, it is.

11 Q. That is the form you signed with the agent?

12 A. Yes.

13 Q. Then, Mr. Yoder, after that you were released by the agent?

14 A. Yes, I was.

15 Q. This was in what area, if you can recall?

16 A. This was in Chaffee, New York.

17 Q. It was at your request that you were released there?

18 A. Well, he asked me if I wanted to go anywhere, and I said
19 no, I would get out right here.

20 Q. That is because that was your home?

21 A. No.

22 Q. Why was it that you wanted to get out there?

23 MR. WAGNER: Objection.

24 THE COURT: Sustained.

25 BY MR. WAGNER:

1 Q. It was at your request that you get out of the car at that
2 point, sir?

3 A. Well, yes.

4 MR. WAGNER: I have nothing else, your Honor.

5

6 REDIRECT EXAMINATION BY MR. MAHONEY:

7 Q. Michael, when you said that -- when you told Mr. Wagner
8 that when you called Agent Gray to get everything straightened
9 out, did you have some format for that in mind, some process
10 by which you would get this straightened out?

11 A. I wasn't sure. I just wanted to do it and be within the
12 limits of my rights.

13 Q. And your rights were something that was brought to your
14 attention by the agent when you finally got into see him?

15 A. Yes, they were.

16 Q. Mr. Wagner asked you if you asked for a lawyer on the 18th
17 when you saw the FBI, and you stated that you had not,
18 however, was the question of getting an attorney in your
19 mind on that day?

20 A. Yes, it was.

21 Q. In what respect?

22 A. In the respect that I thought I needed one.

23 Q. How were you going to get one?

24 A. Well, I figured the Magistrate would have something to do
25 with that. I think Tom Gray did tell me something about I

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

1 would have to fill out some forms for the Magistrate.

2 Q. It was after you were going to see the Magistrate that you
3 were going to get the money?

4 A. Yes.

5 MR. MAHONEY: Would you mark this?

6

7 (Thereupon statement referred to was marked
8 Defendant's Exhibit 1 for identification.)

9

10 BY MR. MAHONEY:

11 Q. Did you appear at my office -- what date did I first appear
12 with you in court?

13 A. I believe it was on the 19th.

14 Q. On that day did you subsequently come to my office?

15 A. Yes, I did.

16 Q. And we had a conversation at that time?

17 A. Yes.

18 Q. And you gave me information, made a statement in essence
19 to me at that time?

20 A. Yes, I did.

21 Q. All right. Showing you what has been marked as Defendant's
22 Exhibit 1 for identification, do you recognize that?

23 A. This is the statement that I made to you.

24 Q. All right. Now, that is a three page document, is it not?

25 A. Yes.

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

1 Q. All right. It indicates -- does it indicate the date it
2 was given?

3 A. Yes, it does.

4 Q. Does it indicate the date that I dictated the statement to
5 my secretary?

6 A. Yes, it does.

7 Q. What date was that?

8 A. On the 19th.

9 Q. Of November 1976?

10 A. Yes.

11 Q. And does it indicate the date it was transcribed by my
12 secretary?

13 A. November 29, 1976.

14 Q. Does it indicate the date that you signed it?

15 A. Yes.

16 MR. MAHONEY: I would like to offer it in evidence, your
17 Honor.

18 MR. WAGNER: I haven't seen it, your Honor.

19 THE COURT: Show it to Mr. Wagner.

20 MR. WAGNER: Your Honor, I am not too sure why Mr. Mahoney
21 is offering this, which is an affidavit of
22 the defendant. Perhaps I should hand it to
23 your Honor and when I object you will under-
24 stand why. I cannot at this time conceive
25 of the evidentiary basis for which Mr. Mahoney

Direct and cross-examination of Michael Yoder
at Suppression Hearing.

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1 is offering this. It is a statement by the
2 defendant following the event we are talking
3 about here. It is self-serving, and it would
4 add nothing to the case.
5 THE COURT: Is it pertinent.
6 MR. WAGNER: I don't see how it is relevant at all.
7 THE COURT: You object to it as being irrevelant.
8 MR. WAGNER: Primarily on that basis, that is correct.
9 MR. MAHONEY: After your Honor has had a chance to read it
10 I will address myself to that.
11 THE COURT: Well, the material in Paragraph 6 is pertinent.
12 It could be said to be self-serving, but so
13 is any testimony given by the witness on the
14 stand, and all of that is receivable.
15 MR. WAGNER: Then I would object to it on the basis that
16 it is not the best evidence since we have
17 the witness and his voice and his memory here,
18 and to allow this would be to allow a defendant
19 or a witness to prepare a --
20 THE COURT: It has a flavor of significance to it in that
21 it shows me that on a date quite a bit earlier
22 from today Mr. Yoder stated a position parallel
23 to his testimony on the witness stand. Any-
24 thing further?
25 MR. WAGNER: I would suggest that that again appears to me

1 to be irrelevant.

2 THE COURT: I will receive this for whatever probity I
3 feel it has.

4

5 (Thereupon Defendant's Exhibit 1, previously
6 marked for identification, was received and
7 marked in evidence.)

8

9 MR. MAHONEY: I have nothing further.

10 THE COURT: Anything further?

11 MR. WAGNER: Nothing else, your Honor.

12 THE COURT: Thank you, Mr. Yoder. Anything further, Mr.
13 Mahoney?

14 MR. MAHONEY: No, your Honor.

15 THE COURT: Does the Government have anything else?

16 MR. WAGNER: We do not, your Honor.

17 THE COURT: Does any defendant have any further testimony?

18 MR. LAMANTIA: No.

19 MR. HARRINGTON: No, your Honor.

20 MR. MAHONEY: No, your Honor.

21 THE COURT: You all rest. Do you want to proceed orally
22 to argue on it or do you want to try and give
23 me some law that you think is pertinent on
24 the one question that I seem to have before
25 me, namely, the possible deprivation of

**Government's Affidavit in support of motion
for rehearing, February 23, 1977.**

Government's Affidavit in support of motion for
rehearing, Feb. 23, 1977.

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Government's Affidavit in support of motion
for rehearing, February 23, 1977.

Form No. 650

CR. No. 76-174

United States District Court
FOR THE

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

vs.

DANIEL YODER, et al.,

Defendants

A F F I D A V I T

RICHARD J. ARCARA

United States Attorney

Western District of New York

Office & P.O. Address

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Buffalo, New York 14202

Filed February 23, 1977

, Clerk.

By _____, Deputy.

Government's Affidavit in support of motion
for rehearing, February 23, 1977.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

v.

DANIEL YODER, et al.,

Defendants

CR. NO. 76-174

A F F I D A V I T

STATE OF NEW YORK)
COUNTY OF ERIE : SS
CITY OF BUFFALO)

Edward J. Wagner, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney
assigned to this case, and am familiar with the facts
and circumstances surrounding it.

2. On November 17, 1976 the Federal Grand Jury
in Buffalo, New York returned an indictment against
Daniel Yoder and co-defendants Brian Buchanan and
Michael Yoder charging violations of 18 U.S.C.,
Sections 2113(a), (b) and (d).

3. A suppression hearing was held on January 3,
1977, January 7, 1977, and concluded late in the day on
January 18, 1977. Following the last witness, the
defendants requested time to submit arguments in writing
and the court set a schedule for the defendants' briefs

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to be filed by Wednesday, January 26, 1977, the government's response due on Friday, January 28, 1977, and oral argument on Monday, January 31, 1977. A transcript of the suppression hearing was ordered, although it was pointed out by the court that this may not be available by the date of argument. This transcript did not become available for use until after January 31, 1977. The court also scheduled a trial date for February 8, 1977, which was advanced to February 1, 1977.

4. Shortly after the suppression hearing ended, and several days before January 26, 1977, the government requested a transcript of the proceedings of November 18, 1976 when the defendants Michael Yoder and Daniel Yoder appeared before the United States Magistrate; this appeared material to the government's case due to the fact that the United States Magistrate advised both defendants of certain rights prior to certain admissions by them, and prior to other evidence developed therefrom.

5. On January 26, 1977 the transcript of the proceedings before the Magistrate was received at the U. S. Attorney's office as was a copy of Brian Buchanan's Memorandum of Law. As is the normal practice, these were taken to our Docket Room for recording and distribution, and were not distributed to me that day.

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6. On Thursday, January 27, 1977 the Buffalo area was stricken by a severe winter storm, and only one secretary and five attorneys were present in the office. Because of the adverse weather and hazardous driving conditions, the office was closed early and for all practical purposes the normal operation of the office was curtailed.

7. Also on January 27, 1977 at approximately 3:15 P.M., I received copies of defendant Michael Yoder's and Daniel Yoder's Memorandum of Law.

8. On Friday, January 28, 1977 the United States Attorney's office functioned normally until approximately 11:00 A.M. when the Buffalo area was again stricken by a severe blizzard. Streets and highways became so hazardous due to ice, snow, and restricted visibility that office personnel were advised to leave as soon as possible; all of the clerical employees had left by approximately noon, and only four attorneys and one law clerk remained.

9. While I had researched the issues of law raised by defendant Daniel Yoder, because of the lack of clerical assistance it was impossible to deliver to the court a written memorandum supporting the government's position. This was brought to the attention of the court through one of the Clerks, Mr. Idziak, on the afternoon of January 28, 1977, and the government was granted an adjournment for its ~~memorandum~~ to Monday, January 31, 1977. 219

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10. The weather in the Buffalo area continued to deteriorate throughout the afternoon and evening of January 28, 1977, developing into what local officials termed the most severe and damaging winter storm in recent history. After spending all day Friday, January 28, 1977 and the early morning hours of Saturday, January 29, 1977, stranded in the U. S. Courthouse, I was able to get a ride to my neighborhood. I remained at my home all weekend, and it was not until approximately noon on

Monday, January 31, 1977 that I was able to free my automobile, which had been stranded in the snow.

11. On Sunday, January 30, 1977 I was notified by my superiors that Judge Elfvin expected me to be present at oral argument on January 31, 1977.

12. On the morning of January 31, 1977 I contacted Chief Deputy Clerk Richard Walsh and advised him that road conditions in the Town of Amherst, where I live, were generally impassable due to massive drifting, and that highway conditions and restricted visibility due to blowing snow made driving dangerous, if not impossible. I also indicated to him that media reports requested that driving be done only in emergency situations, and inquired if the court intended to pursue oral argument in light of these weather conditions. Mr. Walsh advised me that the court did intend to have all attorneys present for argument, and I should make efforts to be there.

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13. Shortly after retrieving my automobile, I left my home in an attempt to go the Courthouse as directed; I found driving to be extremely hazardous with my normal routes completely blocked by snow drifts and abandoned automobiles, and thus I returned to my home and notified the court that I was unable to attend oral argument.

14. I subsequently learned that oral argument did proceed in my absence, with the court granting defendant Daniel Yoder's motion to suppress certain admissions and evidence flowing therefrom.

15. The Buffalo area remained crippled by the blizzard throughout the week of January 31, with conditions so bad that the City of Buffalo subsequently imposed a complete ban on all non-essential driving. Road conditions remained so hazardous that Erie County and surrounding Counties requested, and received, massive Federal assistance, with the area being designated a major Federal Disaster Area. Normal business activities in the City of Buffalo were halted, or severely curtailed, the entire week of January 31st; the United States Attorney's office operated only on February 3 and February 4, 1977, and on these days with abbreviated hours and at well less than half staff.

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16. For all these reasons, the government was prevented from furnishing the Court a written Memorandum of Law, and was unable to attend oral argument on January 31, 1977.

Shirley F. Wagner

Subscribed and sworn to
before me this 23rd day
of February, 1977.

Michael J. Burns
Notary Public
State of California
My Comm. Expires 12/31/78

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to suppress.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,

-vs.-

BRIAN BUCHANAN, DANIEL YODER
and MICHAEL YODER,

Defendants.

Cr. 76-174

MEMORANDUM

and

ORDER

Brian Buchanan, Daniel Yoder and Michael Yoder, defendants herein, sought suppression of evidence as to certain written and oral statements by them to agents of the Federal Bureau of Investigation ("FBI") and as to physical evidence -- i.e., recovered portions of the proceeds of an alleged bank robbery. The chronology of the events was developed in a pre-trial suppression hearing held January 3, 7, 18 and 19, 1977.

On or about October 25, 1976 Buchanan while in Florida learned that FBI agents were inquiring about him in connection with an October 20, 1976 robbery of the Strykersville branch of the Wyoming County Bank. Believing that there was a warrant outstanding for his arrest, Buchanan returned to Buffalo and telephoned Special Agent Thomas Gray of the FBI November 2nd. An appointment was made for Buchanan to come into the FBI office the following day to talk to Gray.

The following morning Buchanan appeared at the FBI office with his fiancée, Nancy Tesch, who by that date had

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already been scheduled to testify before the Federal Grand Jury. Buchanan was taken to an interview room by Gray where Gray and Special Agent Neil Heiner conducted an interview. Buchanan was informed that the interview pertained to the bank robbery and was then read an FBI "Interrogation: Advice of Rights" form which contained his "Miranda rights". Buchanan then was handed the form and appeared to read it. He was asked if he understood his rights and replied in the affirmative; he then signed the form. Believing that he had a right to the appointment of an attorney, Buchanan requested that one be appointed. Gray left the interview room and telephoned an Assistant United States Attorney with respect to such appointment. Gray, on returning, advised Buchanan that he was not entitled to a court-appointed attorney at that time because he was not "formally charged with a crime". He was told that, because there was no warrant for his arrest, he could leave or could remain and answer such questions as he chose to answer. Buchanan chose to remain, answered the agents' oral questions and subsequently signed a typewritten statement prepared by the agents. Thereafter, Gray inquired about the location of the money taken in the bank robbery. Buchanan, later on that same day, led FBI agents to his secreted share of the stolen money. Buchanan then went home. The following day Buchanan went voluntarily and without appointment to the United States Attorney's

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Office and spoke with another Assistant United States Attorney with regard to the appointment of an attorney and was referred to the United States Magistrate who, later on that day, appointed an attorney for him. The indictment was not returned against Buchanan and the others until November 17th. Buchanan was arrested November 22nd and no post-indictment or post-arrest statements by Buchanan are sought to be suppressed.

On or about November 7, 1976, Michael Yoder telephoned the Buffalo Office of the FBI and spoke with Gray. Gray told Michael Yoder that he had been looking for him. Gray, however, also informed Michael Yoder that there was no warrant for his arrest and that he didn't have to come in. Michael Yoder, nevertheless, voluntarily came to the FBI office on November 11th and was interviewed. Special Agent Boerstal and Gray were present. Michael Yoder was advised that the purpose of the interview was to discuss the bank robbery. Michael Yoder had read to him and himself read the "Interrogation: Advice of Rights" form. Michael Yoder then requested that an attorney be appointed. Gray told him that an attorney could not be appointed until he had been formally charged. It is alleged that Michael Yoder understood that, if he made a statement relating to the bank robbery, an attorney would be appointed. Michael Yoder then signed the rights form. Michael Yoder alleged that, while he was aware

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that he was not under arrest and was free to leave, he wanted to give a statement so that an attorney would be appointed. Michael Yoder proceeded to give an oral statement as to how the robbery occurred which statement then was typed, reviewed by Michael Yoder and signed. Michael Yoder at that time gave another shorter statement which was taken down in longhand by Gray and signed by Michael Yoder. This statement identified Buchanan as one of the two other men who had participated with Michael Yoder in the bank robbery. As for the robbery proceeds, Michael Yoder promised to bring what was left of his share to the FBI office the next day, November 12th, but did not. Michael Yoder left after the interview. On November 13th, the day after the indictment came down against Michael Yoder, he again voluntarily appeared at the FBI office and was placed under arrest. He was again advised of his rights and again he read and signed the advice and waiver form. Michael Yoder was asked by Gray about the location of the robbery proceeds and then agreed that he would produce the same after he had been brought before the Magistrate. Less than an hour and a half after being arrested, Michael Yoder appeared before the Magistrate and was allowed to go free after executing a \$5,000 personal recognizance bond. The arraignment on the indictment, however, was not completed until the following day, when the appointed counsel appeared. After bail had been set, Michael

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Yoder directed Reiner to the place where the balance of his share of the money was located.

Daniel Yoder had no pre-indictment or pre-arrest contact with Government agents. He was arrested on November 18th at his apartment where no questions, except concerning his identity, were asked. Daniel Yoder was removed to the FBI agents' automobile where he was advised of his Miranda rights. Although Daniel Yoder indicated that he understood his rights, he would not sign the advice and waiver form. While being transported to Buffalo, Daniel Yoder requested an attorney. Upon arrival at the FBI office, Daniel Yoder was permitted to call his father and he testified at the hearing that his father had advised him not to answer any questions until he had spoken with an attorney. Daniel Yoder was then interviewed by Gray and Reiner. An advice and waiver form was again read to him by Gray and Daniel Yoder was given the form, read it and acknowledged that he understood it, but again refused to sign. Both Gray and Daniel Yoder testified that Daniel Yoder then requested an attorney. Daniel Yoder was told that an attorney would be appointed when he was brought before the Magistrate. Gray testified that Daniel Yoder then, after being advised that he need not talk, confessed to his participation in the bank robbery and agreed to show the location of what remained of his share of the bank robbery. No written confession or

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transcript of oral confession was prepared. Daniel Yoder testified that he only made such statement because the agents told him that such would help him stay out of jail. Daniel Yoder was taken before the Magistrate who set bail at \$5,000 personal recognizance bond and informed the defendant that an attorney would be appointed the next day. Upon leaving the Magistrate's Court, Daniel Yoder directed Gray to the place where the money was secreted.

This decision turns on a proper interpretation and application of Miranda v. Arizona, 384 U.S. 436 (1966), and Massiah v. United States, 377 U.S. 201 (1964), during a period of review and, in the view of some, retrenchment of these decisions by the United States Supreme Court. After the hearing on the suppression motion had been completed, the United States Supreme Court rendered its per curiam decision in Oregon v. Mathiason, ____ U.S. ____, 45 U.S.L.W. 3595 (January 25, 1977) specifying the non-application of Miranda where a suspect voluntarily appears at a police station and discusses, in a non-custodial but coercive ambience, a criminal activity. In Brewer v. Williams, 45 U.S.L.W. 4267, 4331 (March 23, 1977), the United States Supreme Court held unusable an arrested suspect's confessional words and actions because had been deprived of counsel.

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Pre-Indictment Statements of
Brian Buchanan and Michael Yoder

Both Buchanan and Michael Yoder voluntarily contacted the FBI prior to their indictment and, while not under arrest, both answered questions about the bank robbery and gave statements indicating their involvement. If this was all, the recent U.S. Supreme Court decision in Oregon v. Mathiason would settle the matter.¹ The facts in both Buchanan's and Michael Yoder's situations differ from that in Mathiason, in that both were given the so called "Miranda warnings" and both requested the appointment of an attorney prior to questioning. Both were denied such appointment until they had been formally charged with the crime.² They then signed the advice and waiver forms prior to making

¹ There is no testimony which would show that, although not under arrest, they were in custody. In Buchanan's case, it is not contradicted that he was specifically informed that he could leave or remain and answer questions. In Michael Yoder's case, he was aware that he could leave and was not under arrest but gave a statement when advised that an attorney could not be appointed until and unless he had been formally charged.

² This clearly was Buchanan's understanding at the time he gave his statement although, in fact, he was successful on the following day in having an attorney appointed well in advance of the perfunctory of formal charges. Michael Yoder, in his testimony, said that he was told that he could not have an attorney appointed until either he had been formally charged or had given an inculpatory statement. I find this version not credible: the testimony of the two agents is clearly and firmly to the contrary and Michael Yoder is totally silent concerning any effort or request by him towards securing appointed counsel after he had finished giving his statement.

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statements. Nevertheless, I do not find the facts so distinguishable as to permit me to reach the result of suppressing the pre-indictment statements.

These defendants' position includes the argument that they were compelled to abandon their Fifth Amendment right of silence and to give statements and cooperate with the Government because they then had no right to an assigned attorney. This presupposes that these defendants were required to make a decision. There was no indication made or given to these defendants that they would have been arrested or their liberty curtailed in any manner merely because they had remained silent and uncooperative. They were properly advised on the requirements for the appointment of an attorney. The Criminal Justice Act of 1964, as amended in 1973, (18 U.S.C. §3006A) reads in pertinent part:

"(a) Choice of plan -- Each United States District Court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation (1) who is charged with a felony or misdemeanor ***, (2) who is under arrest, when such representation is required by law, (3) who is subject to revocation of parole, in custody as a material witness, *** or, (4) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel.***"

Subsection (4) was inserted to give the act flexibility in an area of constitutional law ever changing by judicial decisions. Presently, the Sixth Amendment right to counsel

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attaches only "now" at or after the initiation of adversary judicial criminal proceedings -- whether by way of formal charge, preliminary hearing, indictment, information or arraignment." Kirby v. Illinois, 406 U.S. 682, 689 (1972). Apparently, there is no authority under the Criminal Justice Act for the appointment unless they were arrested or formal charges were brought. I, therefore, find that the advice to the defendants was not erroneous.

These defendants also contend that, irrespective of the Supreme Court's decision in Mathiason, once an individual has indicated his desire to consult with counsel any further interrogation prior to such consultation is improper. In the light of their signing the advice and waiver forms, I find this argument inappropriate in the fact situations before me.

Therefore, I deny the motions of defendants Brian Buchanan and Michael Yoder to suppress their pre-indictment statements.

Post-Indictment Statements of
Michael Yoder and Daniel Yoder

Any decision as to post-indictment statements must turn on a proper application of Missiah v. United States, 377 U.S. 201 (1964). As in United States v. Satterfield, _____ F.2d _____ (11 Cir. 11th Opinion, Circuit No. 109, December 7, 1976) affirming the District Court's decision at 417 F.Supp.

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293 (S.D.N.Y. 1976), the Government's position is twofold. First, Massiah is distinguishable because of the lack of surreptitious activity in this case. Second, it is contended that there has been a waiver of the right to counsel after "Miranda warnings".

As to the first argument, I agree with the district court decision in Satterfield (supra, at 295) that as to indicted suspects Massiah applies whether or not there was deceit.

As to the second argument, I find that Satterfield as affirmed is controlling and requires the suppression of Daniel Yoder's statements but not those of Michael Yoder.

For the waiver of the Sixth Amendment right to counsel the following standard has been set by the United States Supreme Court in Johnson v. Zerbst, 304 U.S. 458 (1933): "A waiver is ordinarily an intentional relinquishment of a known right or privilege. The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." (Id., at 464.) There is a higher standard for a waiver of counsel after the Sixth Amendment has attached. United States v. Satterfield, supra, at 303. Applying such a test I do not find that the Government has met its burden to show that the statements of

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Daniel Yoder were voluntary. Lupo v. Toomey, 404 U.S. 477, 489 (1972). Daniel Yoder repeatedly after his arrest indicated his desire to have an attorney appointed. Twice he refused to sign the advice and waiver form. There is no written or transcribed statement by Daniel Yoder, either signed or unsigned. There is no express waiver as in United States v. Duvall, 527 F.2d 15 (2d Cir.), cert. denied, _____ U.S. _____, 95 S.Ct. 3173 (1975). Finally, the Government has failed to show that the statements by Daniel Yoder were the result of inquiry initiated by Daniel Yoder and not by the Government. See, for example, United States v. Saynor, 472 F.2d 899 (2d Cir. 1973).

Upon the above findings, I find that all of Daniel Yoder's statements, including any such and any actions leading to recovery of his share of the proceeds should be and hereby are suppressed.

As to the post-indictment and post-arrest statements of Michael Yoder, I find that the statements as to the location of the robbery proceeds were voluntary and that the signing of the advice and waiver form meets the requirements for a waiver of the right to counsel under the Sixth Amendment. I hereby deny his motion to suppress such statements.

The foregoing orders were noted by me on the record in open court February 3, 1977 but the underlying findings of fact and conclusions were not set forth there or in any

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filed written document. Subsequently, the Government moved for reargument or reconsideration or a stating of the underlying findings as to the suppression of Daniel Yoder's statements. I do not desire or need further oral argument and I have given the matter of such suppression further consideration but have concluded that my original result was sound. Consequently, the Government's motion for reargument hereby is denied, its motion for reconsideration has been granted and fulfilled as has its motion for the requisite findings.

Some further comment is appropriate re Michael Yoder. Following my denial of his motion to suppress evidence, he pleaded guilty pursuant to a plea agreement, accepted by me, wherein inter alia his right to appeal from such denial was to be preserved. He was sentenced March 18, 1977, the judgment was filed March 30th and the notice of appeal was not filed until May 19th. Michael Yoder thus delayed his appeal beyond the normal deadline of April 9th and beyond the time to which his time for appeal could have been extended under Fed.R.App.P. rule 4(b). He contends that a certain written inquiry to me dated April 21st should be construed as his notice of appeal and I sua sponte have a question whether the order denying suppression was an appealable order in view of my omission to make "essential findings on the record" as required by Fed.R.Crim.P. rule 12(e). These

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are matters for resolution by the United States Court of
Appeals for this Circuit.

Dated: Buffalo, N.Y.
June 17, 1977

John J. Elfvin
U.S.D.J.

Judge Elfvin's Memorandum of August 11, 1977.

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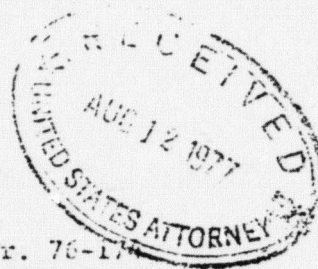
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,

vs.:-

JAMES DOUGLAS, DANIEL YODER
and ISHAI YODER,

Defendants.



Cr. 76-17

MEMORANDUM

Defendant Ishai Yoder pled guilty to a charged violation of 18 U.S.C. 2383(a) and was sentenced March 28, 1977 to eight years in the custody of the Attorney General pursuant to section 3010(c) of Title 18. The plea had been preceded by an evidentiary hearing on defendant's motion to suppress statements made by him to agents of the Federal Bureau of Investigation and certain physical evidence. After the hearing and on consideration, I denied defendant's motion.

As one facet of the plea agreement submitted to and approved by me, defendant retained a right to appeal from such denial. At the time of pleading and sentencing (a pre-sentence investigation having been made and a report thereof having been presented to me upon defendant's written consents), it was expressly noted that a notice of appeal was to be filed. Such notice was not filed until May 19, 1977.

Defendant, through his assigned counsel, has orally petitioned the court and ex parte for relief supposedly available to him pursuant to the final sentence of Fed. App. Proc. rule 11, which provides as follows:

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Upon a showing of excusable neglect the district court may, before or after the time [10 days after the entry of the judgment or order appealed from] has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision."

Defendant's petition for such relief was not, however, made until the afternoon of May 17, 1977. The judgment had been filed March 10th so defendant's unenlarged time for filing his notice of appeal therefrom had expired April 9th.

Although the abovequoted rule permits the enlargement of time to be made "after" that date, it cannot have been or be contemplated that such could be made later than the 40th day after entry of the judgment or order. Such last day was May 9th. Even if I, after May 9th, had the power nunc pro tunc -- i.e., now for some date prior to May 10th -- to extend the time for filing the notice of appeal, such filing could not have been later than May 9th. If defendant had filed his notice of appeal after April 9th and prior to May 10th -- e.g., on April 25th -- I might conceivably have authority after May 9th to legitimize such filing nunc pro tunc. As noted, however, defendant did not file a notice of appeal prior to May 10th and did not file such until May 10th.

In such regard, defendant subsequently asked me to consider a certain letter which his counsel had sent to me under date of April 21st (which had been received by me on the following day) as the requisite notice of appeal. The text of the letter is as follows:

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The unusual posture of these two cases has left me confused as to the proper time for the filing of a Notice of Appeal. I believe that this letter will give you an opportunity to disabuse me of any false assumption in time to remedy any mistakes I may have made.

The decision on the motion of the Government to reargue in *People v. Daniel Yoder* is still pending. I believe also pending before you is an application for a written decision, an order and findings of facts with regard to the suppression motions brought by the defendant [Daniel Yoder].

From the outset it is my understanding that the Notices of Appeal in these two cases should be filed together, and, if a written decision were to be filed, that would be the proper starting point for the running of the time to file a Notice of Appeal.

"It would seem most reasonable for us to file a Notice of Appeal at the same time that Daniel Yoder would be expected to. However, it occurs to me that since the actual judgment which will be appealed from has already been entered, on March 23, it may be my duty now to seek permission to file a late Notice of Appeal instead of waiting for the decisions on whatever, on the applications now pending before the court.

"Please advise what is the preferred course of the conduct."

No reply was made by me to such inquiry and counsel never followed on it with me. I did encounter him by chance during a lunch hour and advised him that the matter of appeal was something that he should be concerned about and that I didn't consider that he could draw much help from the circumstances set forth in his letter. I adhere to this latter view because the letter is not at all in the form or substance of and does not purport to be a notice of appeal and because it was not filed in the district court on the

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rules require. (Admittedly, papers in a civil case can be filed with a judge pursuant to Fed.R.Civ.P. rule 5(e) who, having permitted such to be done, is required to note the filing date and forthwith transmit them to the clerk of the court. See, International Business Machines Corp. v. Realstein, 526 F.2d 37, 46 (2d Cir. 1975). What the effect of Fed.R.Crim.P. rule 56 in these circumstances is or whether, in the absence of a counterpart of Fed.R.Civ.P. rule 5(e) for criminal cases, rule 5(e) can be said to have applicability in criminal cases I do not decide. The latter was not "permitted" by me to be "filed" with me and does not ask that it be "filed".) Also, if sentence had been imposed following a trial I would have had to advise defendant of his right to appeal, including his right to apply for leave to appeal in forma pauperis, and, if defendant so requested, the clerk would have had to prepare and file a notice of appeal on defendant's behalf. See, Fed.R.Crim.P. rule 32(a)(2). Defendant having pled guilty, there was no obligation on my part to advise defendant of his right to appeal; nevertheless, defendant and his counsel were advised at sentencing concerning the filing of a notice of appeal. Following imposition of sentence I said to defendant: "You will, of course, be taking an appeal, you will be filing that notice of appeal from my denial of the suppression. The disposition of the other counts [to be dismissed, per the plea agreement] will await the finality there." Later in the same proceedings I said to defendant's

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attorney: "You will be filing a notice of appeal?" and received the answer "Yes, I believe so. I do think probably there is some other development in the case, I am not quite aware of, after I find that out." I mentioned that there had been some talk of "another feature" involving defendant's co-defendant Brian Buchanan and the Government's attorney said that he had "mentioned it to him". Assumedly, this reference was to Buchanan's willingness to be a witness for the Government and against co-defendants Michael Yoder and Daniel Yoder, which consideration might well have been construed by Michael Yoder and his attorney as making less meaningful his right to appeal from the order denying suppression.

What is factually set forth in the letter is true and defendant's neglect to file the notice of appeal might be excusable.

The evidentiary hearing on defendant's and his two co-defendants' motions to suppress evidence had been held on the 3rd, 7th, 16th and 19th of January. At the conclusion of the taking of evidence, the parties were afforded an opportunity to file briefs and oral argument was set for January 31st. The trial of the case was postponed to February 8th. Counsel for defendants appeared before me on the 31st (counsel for the Government being precluded by bad transportation conditions then extant in the Buffalo area) and oral argument was had. At the end of that day I advised all counsel by telephone of my decisions which were that the

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motions of defendant and one of his co-defendants were denied and that the motion of the second co-defendant (Daniel Yoder) was granted. All defendants (except Daniel Yoder) and their attorneys and the Government attorney were in front of me February 3, 1977. At that time counsel for defendant Daniel Yoder moved to sever his case from the others' and, the Government not objecting, the motion was granted. Mr. Wagner noted the Government's intention to appeal my order suppressing Daniel Yoder's statement. Defendant Michael Yoder and the Government then presented to me a plea agreement for my consideration and possible approval. Because I wished the benefit of a pre-sentence investigation and report before deciding to approve or disapprove the tendered plea agreement, defendant Michael Yoder executed the requisite consents and further proceedings were delayed until March 14th. The following colloquy of February 3rd has pertinence:

MR. MARONEY [counsel for defendant Michael Yoder]: Judge, by that time will we have an order and decision on the -- order and memorandum on the decision to deny the motion to suppress?

THE COURT: You have it already, it is on the record at this point, and you can get that from Mr. Noel [the court reporter]. I won't have any other separate order.

MR. MARONEY: Was there something read into the record?

THE COURT: I have stated the same thing earlier today as to Mr. Buchanan that I have now stated as to Michael Yoder, namely, that his motion to suppress has been and is denied by me.

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MR. HARGREY: To memorandums with that?

THE COURT: No memorandums, no.

On February 23rd the Government filed its Notice of Appeal from an Order of mine granted and entered January 31st suppressing the confession of Daniel Yoder and physical evidence subsequently derived therefrom. Earlier on the same date there had been filed the Government's Notice of Motion for a re-argument of the suppression motion or in the alternative for an order setting forth the essential findings of fact and law supporting the Court's decision to suppress said evidence as required by Federal Rules of Criminal Procedure, 12(e). The motion was returned before me February 28th and I reserved decision in order to examine the transcript of the proceedings of February 3rd. On such basis, the Government and defendant Daniel Yoder stipulated March 8th that the former's Notice of Appeal was withdrawn without prejudice following my decision to reconsider my order of January 31, 1977. The stipulation was filed March 9th and a certified copy was forwarded to the Clerk of the Second Circuit Court of Appeals by letter dated March 10th.

Against this background defendant Michael Yoder pled guilty and was sentenced March 28th and his attorney's letter of April 21st was written.

There is no question but that on February 3rd and on the record I stated that it was my decision that defendant's motion to suppress was denied. That motion had been determined

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January 31st and the same was noted on the record February 3rd. There was, however, no compliance by me with the requirement of Fed.R.Crim.P. rule 12(e) that, "[w]here factual issues are involved in determining a motion, the court shall state its essential findings on the record". I did not state in any part of the record, my findings as to the factual issues. I have done so only during the past week. If I had set them forth orally in open court and on the record on February 3rd (a matter of easy and simple accomplishment!), defendant's right to appeal would have certainly passed without its having been exercised, leaving him only with some possible relief by way of asking to withdraw his plea of guilty which was premised, in part, on the preservation to him of such limited right of appeal.

Inasmuch as I failed to make such findings of fact on the record, it must be decided whether such omission affects defendant's right to appeal. Such question obviously must finally be resolved by the appellate court, but I have nevertheless given it consideration. I have found neither controlling nor illuminating authority under Fed.R.Crim.P. rule 15(a) nor under Fed.R.Civ.P. rule 52(a) (which requires findings of fact and conclusions of law in all actions tried upon the facts without a jury or with an advisory jury). That is strongly implied, however, is that the absence of findings does not affect appealability. Such absence becomes a ground for reversal which can be and is set forth by the

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appellant but it quite often does not result in reversal by the appellate court. Where complete or adequate understanding can be had without findings, the appellate court can, and often will, proceed to determination of the appeal without remanding for findings. Armstrong v. Collier, 536 F.2d 72, 77 (5th Cir. 1976); Laighton v. One William Street Fund, Inc., 343 F.2d 565, 567 (2d Cir. 1965); Gallory v. Citizens Utilities Company, 342 F.2d 796, 797 (2d Cir. 1965); Shatz-Schneider, Inc. v. Henry, 239 F.2d 79, 84 (5th Cir. 1956); Succione v. Morse-Barrett Products Co., 191 F.2d 197, 200 (9th Cir. 1951); Quade v. Local 1250, Retail Wholesale Dept. Store Union, 170 F.2d 695, 699 (2d Cir. 1948). Where the appellate court is unable to perceive the factual situation adequately, it remands to the lower court for findings and does not, by finding, hold that the appeal was premature because it was taken from an order or judgment which was not belinked by the required findings. In United States v. Stanton, 287 F.2d 876 (2d Cir. 1961), the trial court's judgment, with findings and conclusions, was upheld. The case had been tried before a judge only who had concluded, in favor of the taxpayer plaintiff, that certain money had been received by him in the form of a non-taxable gift. The Court of Appeals (Stanton v. United States, 288 F.2d 727 (1959)) had reversed (holding that the taxpayer had not carried his burden of showing that the Commissioner's finding of taxability, prima facie correct, was wrong) and remanded

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for further proceedings not inconsistent with its opinion. The case then went before the United States Supreme Court and was considered with and under the name of Commissioner v. Silberstein, 363 U.S. 273 (1960). It was there held that the trial court's findings were so sparse and general as to afford the reviewing court not the semblance of an indication of the legal standard with which the trier of fact has approached his task" (Id., at 292); consequently, the "judgment" of the appellate court was vacated and the cause remanded to the District Court for further proceedings not inconsistent with this opinion." Id., at 293. The trial judge thereafter had before him the settlement of proposed findings pursuant to such remand. Stanton v. United States, 136 F.Supp. 393 (E.D.N.Y. 1960). The judge enumerated the evidence which had been before him in the first instance and noted that "no suggestion has been made that it ought to be supplemented for present purposes." Id., at 394. He cited the aforementioned vacating and remand and declared that the original finding of this court therefore survives the action of the Court of Appeals." Ibid. In Hatahley v. United States, 351 U.S. 173 (1956), which was an action under the Federal Tort Claims Act wherein the trial court had awarded a lump sum judgment for eight plaintiffs, it was held that it was essential to an apportionment of the award to have 'pertinent findings', that 'the findings here are totally inadequate for review' and that the case must be remanded to the District Court

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for the appropriate findings in this regard. Id., at 142. The Court of Appeals for the Second Circuit in Lapalme v. Galloway, 449 F.2d 986 (2d Cir. 1971), refused to condone failure to comply with the letter and spirit of rule 52(a). Id., at 987. In Gallagher v. Hollman, 110 F.2d 111 (5th Cir. 1973), the appellate court found itself unable to say what the trial judge's basis for judgment following a non-jury trial was, consequently, whether he was correct. The case was remanded for findings and conclusions and judgment. There is support in Alpha Distrib. Co. of Cal., Inc. v. Jack Daniel Macillery, 454 F.2d 942 (9th Cir. 1972), for an argument that the absence of findings and conclusions leave open to a party a subsequent appeal after the findings and conclusions had been made. Id., at 944. Defendant here could argue therefore that the time for noticing his appeal did not start to run until he had made the requisite findings of fact.

All of the above is noted merely for the record here and for whatever use either party may choose to put it to on an ensuing appeal.

There is no determination because such is not my prerogative. Whether it is to be ruled upon, if at all, by a higher court.

Witness my hand, N.Y.
August 11, 1977

John F. Elfvin
Judge

AFFIDAVIT OF SERVICE BY MAIL

RE: USA vs Michael & Daniel Yoder

No. 77-1263

State of New York)
County of Genesee) ss.:
City of Batavia)

I, Leslie R. Johnson being
duly sworn, say: I am over eighteen years of age
and an employee of the Batavia Times Publishing
Company, Batavia, New York.

On the 22nd day of August, 19 77
I mailed copies of a printed Appendix in
the above case, in a sealed, postpaid wrapper, to:

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New Federal Court House, Foley Square
New York, New York 10007

2 copies to: Mark J. Mahoney Esq.
1340 Statler Hilton Hotel
Buffalo, New York 14202

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Buffalo, New York 14202

at the First Class Post Office in Batavia, New
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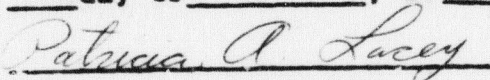
Richard J. Arcara, U.S. Attorney, Att: Edward J. Wagner, Asst. U.S. Attorney

502 U.S. Court House, Buffalo, New York 14202



Sworn to before me this

22nd day of August, 19 77



PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 1979.